



California Fair Political Practices Commission

June 16, 1987

Gregory R. Cox, Mayor
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 92010

Re: Your Request for Advice
Our File No. A-87-128

Dear Mayor Cox:

You have requested advice concerning your duties as Mayor of the City of Chula Vista under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} In addition to your letter, we have received and reviewed an opinion letter which was provided to you by Dan Stanford, Attorney at Law.

QUESTIONS

1. Are you prohibited from participating in decisions on development projects in which the developer is a subsidiary of a corporation which provided a loan to you and another party?

2. Are you prohibited from participating in decisions regarding the subsidiary's development projects by virtue of the fact that you hold an ownership interest in real property located in Austin, Texas which is security for the loan?

3. Are you prohibited from participating in decisions regarding the subsidiary's development projects where the proceeds of the loan were used solely for the real property in which you hold an ownership interest?

4. Are you required to disclose, in your past or future statements of economic interests, your ownership interest in the Texas property?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

5. Are you required to disclose the loan in your past or future statements of economic interests?

CONCLUSIONS

1. Unless the loan was received in the regular course of business, on terms available to the public without regard to official status, you are prohibited from participating in any decision which will have a reasonably foreseeable material financial effect on the parent corporation or its subsidiary which is distinguishable from the effect on the public generally. We do not have sufficient facts to determine whether the loan was received in the regular course of business on terms available to the public without regard to official status.

2. The fact that you have an ownership interest in the real property which is security for the loan is not a basis for you to disqualify from decisions affecting the lender's subsidiary corporation. However, as described above, the loan itself may be a basis for disqualification.

3. Regardless of how the loan proceeds were used, the loan is a basis for disqualification from decisions affecting the lender's subsidiary unless the loan was received in the regular course of business on terms available to the public without regard to official status.

4. You are not required to disclose your ownership interest in the Texas property in your past or future annual statements of economic interests.

5. The loan must be disclosed in amendments to the annual statements of economic interests filed by you on March 28, 1985 and March 28, 1986. The loan must also be disclosed in your future annual statements of economic interests so long as the outstanding balance exceeds \$10,000. The loan need not be disclosed in the assuming office statement of economic interests filed by you on November 26, 1986.

In addition to the foregoing transactions, you have also provided us with facts which indicate that in 1983 you received from a limited partnership a promissory note secured by a land lease which the limited partnership holds on the Austin, Texas real property in which you hold an ownership interest. The promissory note remains outstanding. The note is a basis for you to disqualify from any decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the limited partnership. If in any year you receive or received payments

of \$250 or more on the note, you must disclose the payments in your annual statement of economic interests unless the limited partnership is outside your jurisdiction and is not doing business within the jurisdiction, not planning to do business within the jurisdiction, or has not done business within the jurisdiction during the two years prior to the time the statement is or was required. The loan payments need not be disclosed in your assuming office statement of economic interests.

FACTS^{2/}

In 1979, a joint venture, in which you had an investment interest, purchased a parcel of land and improvements in Austin, Texas. The improvements included an apartment complex. In 1983, Green Tree, Ltd. ("Green Tree"), a limited partnership, purchased the apartment complex and a long-term lease on the land from the joint venture. As a result of that sale, you received a promissory note from the limited partnership in the amount of \$117,000. The note was secured by a third trust deed on the land lease. You also retained a reversionary fee simple interest in the land.

You have indicated that in August 1985, as a result of an effort by Green Tree to secure refinancing of the Austin apartments, you "co-signed" for a loan to Green Tree in the amount of \$2.2 million. You stated that the purpose of co-signing was to subordinate your interest to the new loan. You have provided us with copies of the promissory note and deed of trust relating to this loan. The note and deed of trust list you and Green Tree as the "borrower." The deed of trust indicates that you provided as security for the loan your reversionary fee simple interest in the land. You did not have, nor have you ever had, any interest in the Green Tree limited partnership. All the proceeds from the loan were used in connection with the Austin, Texas real property. You received no principal reduction as a result of the refinancing. The loan was made by Home Federal Savings and Loan Association, a San Diego commercial lending institution doing business in the City of Chula Vista.

^{2/} In its advice giving function, the Commission is not a finder of fact. (In re Oglesby, 1 FPFC Ops. 71, 77, No. 75-083.) The immunity provided by Section 83114 requires that all material facts be fully disclosed.

Home Capital Development Corporation is a subsidiary of Home Federal Savings and Loan Association. Home Capital has been, and is currently involved as a joint venturer in two ongoing development projects in Chula Vista.

ANALYSIS

Disqualification

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which he knows, or has reason to know, he has a financial interest. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family, or on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(Section 87103(b) and (c).)

You have an ownership interest in the real property in Texas. In addition, the \$117,000 note and deed of trust makes Green Tree a source of income to you. Accordingly, you may not participate in any governmental decision which will have a reasonably foreseeable material financial effect on the real property or on Green Tree.

The term "income" includes outstanding loans. (Section 82030.) The loan which you and Green Tree received from Home Federal Savings and Loan is still outstanding. Therefore, unless the loan was received "in the regular course of business on terms available to the public without regard to official status," you may not participate in any decision which will have a reasonably foreseeable material financial effect on Home Federal or its subsidiary Home Capital Development Corporation.

(Regulation 18706.) We do not have sufficient facts to make this determination at the present time.^{3/}

Disclosure

In your annual financial disclosure statement, you are required to disclose interests in real property located in your jurisdiction. ^{4/} (Sections 87203 and 82033.) The real property in Austin, Texas is not located in your jurisdiction. Accordingly, it need not be included in your past or future statements of economic interests.

Your annual financial disclosure statements also must disclose sources of income of \$250 or more during the period. (Section 87203.) An exception to this requirement is that the income need not be reported if it is received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction or not having done business within the jurisdiction during the two years prior to the time the statement must be filed. (Section 82030(a).) Accordingly, if you receive or received \$250 or more in loan payments during a particular reporting period, the income must be disclosed on your annual financial disclosure statements unless the jurisdictional exception applies.^{5/} (See, In re Baty,

^{3/} For example, Mr. Stanford's letter refers to numerous documents involving this loan which we have not had an opportunity to review.

^{4/} Real property is deemed to be "within the jurisdiction" with respect to a local government agency if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency.

^{5/} Mr. Stanford indicated that Green Tree is registered in Texas, does business only in Texas and does not do any business in your jurisdiction. However, the note and deed of trust you provided us describes Green Tree as "a California Limited Partnership." In light of this inconsistency we do not currently have sufficient facts to determine whether the promissory note from Green Tree must be disclosed.

5 FPPC Ops. 10, No. 77-011, copy enclosed.) Sources of income are not required to be disclosed in candidates' statements or assuming office statements. (Sections 87201 and 87202.) Accordingly, the loan payments did not need not to be disclosed in the assuming office statement filed by you on November 26, 1986. (Section 87202.)

Income does not include:

(8) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status if:

(A) Used to purchase, refinance the purchase of, or for improvements to, the principal residence of filer; or

(B) The balance owed does not exceed ten thousand dollars (\$10,000).

(Section 82030 (b)(8)(A) and (B).)

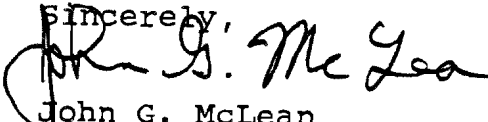
The loan which you and Green Tree received from Home Federal had no connection to your principal residence and has a balance in excess of \$10,000. Accordingly, even if the loan was received in the "regular course of business on terms available to members of the public without regard to official status," it should have been disclosed in your 1985 and 1986 annual statements.^{6/} Again, you are not required to disclose the loan in your candidate's statement or your assuming office statement. Accordingly, those statements need not be amended.

^{6/} Both your letter and Mr. Stanford's opinion have questioned the reason why the Act might require disclosure of a commercial loan which, if received by an official in the regular course of business on terms available to members of the public without regard to official status, would not be a basis for disqualification. Disclosure would include among other things the annual interest rate and the security, if any, given for the loan. The most obvious reason for disclosure is that it assists the public in determining whether in fact the loan was received in the regular course of business without regard to official status and on terms available to the general public.

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If you have any questions, please contact me at
(916) 322-5901.

Sincerely,



John G. McLean
Legal Counsel

JGM:jas

OFFICE OF THE MAYOR
GREGORY R. COX

CITY OF
CHULA VISTA

APR 22 2 11 PM '87

April 22, 1987

Mr. John McLean
Staff Attorney
Technical Assistance & Analysis Division
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Mr. McLean:

I am writing to you to ask your advice with regard to certain specific questions relating to my filing obligations under the Political Reform Act. I currently serve as the Mayor of Chula Vista and have ongoing filing requirements. I would appreciate your advice with respect to the questions which follow so that I can ensure the accuracy of my future filings and make an informed determination about the necessity of filing an amendment relating to certain previously-filed Statements of Economic Interest. Although I am aware of the Commission's policy of not giving advice with respect to "past conduct," I need your advice and answer to these questions to determine whether a corrective amendment should be filed and to assist me in the preparation of future Statements of Economic Interest. I appreciate your assistance and look forward to receiving your response.

First, please allow me to provide you with a brief narrative of necessary background facts. I was first elected to the Chula Vista City Council on June 8, 1976. In April, 1980, I was reelected to the City Council for a second term. Thereafter, on November 3, 1981, I was elected Mayor of the City. My last campaign resulted in my reelection as Mayor on November 4, 1986.

Throughout the years, I have faithfully and conscientiously filed all the required Statements of Economic Interest. Each year, I have obtained the assistance of our respected City Clerk, Jennie Fulasz. In addition, I have always carefully reviewed my filings and have done my best to ensure thorough and complete disclosure. In fact, in some instances, I have been informed by our City Clerk that I have over-reported and included information not specifically required by law. Finally, I have always been very careful to avoid even the appearance of a conflict of interest in my votes as a City Councilman and as Mayor. There have, in the past, been a few occasions in which I have abstained from voting as a result of certain limited personal interests.

With that brief overview, I would like to give you the following additional facts. In 1983, as the result of the sale of an apartment complex located in Austin, Texas, I received a third trust deed on the Austin, Texas, property in the amount of \$117,000. On March 30, 1984, I filed my annual Statement of Economic Interest for the period covering January 1, 1983, through December 31, 1983. Thereafter, on March 29, 1985, I filed my annual Statement of Economic Interest for the period covering January 1, 1984, through December 31, 1984. As of this date, I still hold the third trust deed secured by a land lease on the apartment complex in Austin, Texas.

In August, 1985, as a result of an effort of the new owners, a limited partnership in which Patrick Judd is the General Partner, to secure refinancing of the Austin apartments, I was asked to co-sign for a loan to Patrick Judd in the amount of \$2.2 million. The purpose of my co-signing was to subordinate my interest to the new loan. I did not have, nor have I ever had, any interest in the Limited Partnership. All the proceeds from this loan were used in connection with the Austin, Texas, real property and I received no principle reduction as a result of the refinancing. The loan was made by Home Federal Savings and Loan Association, a San Diego commercial lending institution doing business in the City of Chula Vista. I enclose, for your information, a photocopy of all the loan documents relating to this loan. This loan was made by Home Federal in the regular course of business and on terms which were available to the public generally. I did not receive any special treatment, favorable terms, conditions, or any other considerations. In fact, negotiations were handled by a mortgage company representing Patrick Judd. Patrick Judd asked that I subordinate my interest in order to allow the transaction to proceed. The loan transaction was handled, at all times, on the part of both sides as a pure business transaction. I do not now, nor have I at any time since July, 1983, had any management responsibilities or control over the Austin, Texas, real property. It was the responsibility of the Limited Partnership to pay any and all operating costs, including the note due Home Federal, from the proceeds of rents collected. Home Capital Development Corporation is a subsidiary of Home Federal Savings and Loan Association. Home Capital has been, and is currently involved as a joint venturer in two ongoing development projects in Chula Vista.

On March 28, 1986, I filed my annual Statement of Economic Interest for the period covering January 1, 1985, through December 31, 1985. Thereafter, on November 26, 1986, after being sworn in as Mayor, I filed my Assuming Office Statement of Economic Interest.

In light of these considerations: a) there will be future City Council votes regarding Home Capital projects; b) I would like to provide the Commission with any necessary amendments to my Statements of Economic Interest; and c) I need your advice in connection with the filing of all future Statements of Economic Interest, I ask you to address and answer the following specific questions:

1. May I participate in the voting on issues relating to developments in which Home Capital has an interest?
2. As a result of my "ownership interest" in the Austin, Texas, apartment complex, namely the third trust deed, do I have a conflict of interest in connection with any votes cast on Home Capital developments?
3. In light of having co-signed for a loan from Home Federal Savings and Loan Association, the proceeds of which were used solely for the Austin, Texas, property, do I have any conflicts of interest regarding votes on Home Capital projects?
4. Is it necessary for me to file an amendment to my Statement of Economic Interest, filed on March 30, 1984, to disclose the 1983 third trust deed on the Texas property?
5. Is it necessary for me to file an amendment to my Statement of Economic Interest filed on March 29, 1985, to disclose the 1983 third trust deed on the Texas property?
6. Is it necessary for me to file an amendment to my Statement of Economic Interest filed on March 29, 1985, to disclose the loan from Home Federal?
7. Is it necessary for me to file an amendment to my Statement of Economic Interest filed on March 28, 1986, to disclose the loan from Home Federal?
8. Is it necessary for me to file an amendment to my Assuming Office Statement of Economic Interest, filed on November 26, 1986, to disclose the loan from Home Federal?
9. Is it necessary to disclose, on Schedule C of my future Statements of Economic Interest, my "ownership interest" in the Texas property, namely my third trust deed?
10. Is it necessary to disclose on my future Statements of Economic Interest, the loan obtained from Home Federal?
11. If since given the following conditions, it is not necessary for me to disclose the "ownership interest" in the Texas property (the loan was obtained by a commercial lending

institution in the regular course of business on terms available to the public without regard to my official status, the proceeds of the loan were used in connection with the Texas property, I did not receive any principle reduction, the purpose of disclosure is to prevent conflicts of interest, and California Government Code S87103 prevents me from ever having a conflict of interest in connection with the loan from Home Federal) why would disclosure of the loan be required on my future Statements of Economic Interest?

12. Having been required to spend a considerable amount of time on the issues I have raised, I find the various provisions of the Political Reform Act in this specific area conflicting and confusing. Are there some basic policy considerations for requiring disclosure of interests which cannot, by law, constitute the basis for a conflict of interest?

Although I fully appreciate the complexity of these issues, I know you will understand both the seriousness of these questions and my need for prompt and thorough responses.

Thank you in advance for analyzing these questions and preparing responses. If you have any questions, comments, or need additional information, please do not hesitate to contact me directly.

Very truly yours,



Gregory R. Cox
Mayor, City of Chula Vista

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May 15, 1987

Mr. Gregory R. Cox
Mayor of Chula Vista
647 Windsor Circle
Chula Vista, CA 92010

Re: Reporting Requirements Under
the Political Reform Act

Dear Mayor Cox:

The purpose of this letter is to outline the findings and conclusions of my review and research of your reporting/disclosure and conflict of interest requirements under the Political Reform Act of 1974 (hereinafter "PRA"). This legal opinion is based on the facts and circumstances as stated in this letter.

INTRODUCTION

In April 1987, you retained me to act as independent counsel in thoroughly reviewing, rendering opinions and making recommendations regarding your obligations, as an office holder, under the PRA. Specifically, you requested that I obtain all information I deemed relevant in order to opine on your obligations to (a) report on your Statements of Economic Interests certain interests relating to real property located in Austin, Texas, and (b) to refrain from conflicts of interest relating to those interests.

During the month of April 1987, I conducted a thorough and aggressive review and analysis of your reporting requirements under the PRA and the potential for conflicts of interest. With your cooperation, I have been granted complete access to all of your books and records, including every Statement of Economic Interests you have filed since being first elected in

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1976. In addition, I have, among other things, conducted interviews of you and your wife, Cheryl, Thomas J. Harron, City Attorney for the City of Chula Vista, Mrs. Jennie Fulasz, City Clerk for the City of Chula Vista, Patrick Judd and Kim Fletcher, Chairman of Home Federal Savings & Loan Association. I have reviewed all of your relevant documents, books and records, researched the law applicable to your fact situation and reviewed all of the recent newspaper articles and editorials on the subject. Based upon interviews, document review and research, I am able to render this opinion regarding your reporting and conflict of interest obligations.

BACKGROUND FACTS

You were first elected to the Chula Vista City Council on June 8, 1976. In April 1980, you were reelected to the City Council for a second term. Thereafter, on November 3, 1981, you were elected Mayor of the City. Your most recent campaign resulted in your reelection as Mayor on November 4, 1986.

Since first being elected, you have filed all of the required Statements of Economic Interests. Each year, in doing so, you have obtained the assistance of City Clerk, Jennie Fulasz. Also, each year you have carefully reviewed your filings to ensure thorough and complete disclosure. You have met all of your filing obligations in a timely fashion.

In January and February 1979, you were part of a Joint Venture which purchased land and improvements in the form of an apartment complex located in Austin, Texas. Specifically, you acted as Trustee for a Joint Venture which acquired an 80% ownership interest in the Austin, Texas, apartment units with Barry S. Gillingwater, as Trustee, holding a 20% ownership interest. The acquisition of the apartment complex was finalized in March of 1979.

In 1983, when a downturn in the Texas economy led to the sale of the apartment complex to a Limited Partnership, you retained fee ownership of the land and received a third trust deed, in the amount of \$117,000 as a result of the sale of your interest in the apartment complex (i.e., improvements). Your third trust deed was secured by a ground lease on the property.

The Limited Partnership which purchased the apartment complex is registered in Texas, does business only in Texas and does not do any business in your jurisdiction.

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On March 30, 1984, you filed your annual Statement of Economic Interests for the period covering January 1, 1983, through December 31, 1983. Thereafter, on March 29, 1985, you filed your annual Statement of Economic Interests for the period covering January 1, 1984, through December 31, 1984. As of this date, you still hold the third trust deed, secured by a land lease on the apartment complex.

In 1984, the new owners of the property obtained an appraisal of the property with the intention of refinancing it. In late 1984 and early 1985, the new ownership attempted to refinance the property, and Patrick Judd, General Partner for the Limited Partnership owners, presented the appraisal to a number of mortgage bankers and several lending institutions.

Eventually, an Account Executive with Remington Mortgage Corp. secured an "expression of interest" from Home Federal Savings & Loan Association (hereinafter "Home Federal"). Thereafter, the details of the refinancing loan with Home Federal were handled through the Account Executive with Remington Mortgage Corp. Home Federal completed its own appraisal of the property and required substantial documentation prior to approval of the loan, including a loan application, a form for Financial Information for Entities, Request for Verification of Deposit forms, Request for Verification of Employment forms, copies of tax returns, a schedule of rental income and expenses, a detailed breakdown of the proposed use of the loan proceeds (including a detailed analysis of proposed refurbishing costs), balance sheets, a Rent Roll, the Austin Apartment Report compiled by M/PF Research Inc., personal financial statements, a year-to-date operating statement, previous operating statements and copies of recent appraisals, among other documents. In addition, Home Federal required that you subordinate your lease interests to the new loan and that you agree to co-sign for the loan with Patrick Judd, General Partner of the Limited Partnership owners. The loan amount was \$2.2 million, and the appraisals established the value of the property to be between \$3.2 million and \$3.75 million. At the time of the loan, the occupancy rate of the apartment complex was over 90% and the property was generating a positive cash flow.

You did not have, nor have you ever had, any interest in the Limited Partnership. All of the proceeds from this loan were used in connection with the Austin, Texas, real property and you received no principal reduction on your \$117,000 third trust deed as a result of the refinancing.

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The loan was ultimately made by Home Federal, a San Diego commercial lending institution doing business in the City of Chula Vista. Home Federal required that \$75,000 of the new loan be set aside in an interest bearing account in case of default and that \$75,000 be set aside for specified, uncompleted renovations.

Although you met with Kim Fletcher on one brief occasion, all details of the loan transaction were handled by a Home Federal loan officer, Remington Mortgage Corp., Pat Judd, representing the current ownership of the apartments, and Home Federal's loan committee. The \$2.2 million loan, ultimately approved by Home Federal's loan committee, is properly and thoroughly documented. You have made those documents available to me and the Fair Political Practices Commission (hereinafter "FPPC").

Based upon my review of the loan documentation and interviews, the only reasonable conclusion is that the loan was made by Home Federal in the regular course of business and on terms which were available to the public generally. It is clear that you were never offered, nor did you ever receive, any special treatment, favorable terms, conditions or any other considerations not available to the public generally. The loan amount, loan terms, loan fees, loan points, interest rate and impound amounts were no more favorable than those which were available to the public generally. I might add that, from a financial standpoint, the loan appears to be thoroughly researched, well-supported and well-documented. I have found no evidence of any favoritism and the only reasonable conclusion is that the loan transaction was handled, in every respect, on the part of both sides, as a pure business transaction.

You do not now, nor have you at any time since 1983, had any management responsibilities or control over the Austin, Texas, real property. It was the responsibility of the Limited Partnership to pay any and all operating costs, including the note due Home Federal, from the proceeds of rents collected.

As a result of further economic downturns in Texas, the Limited Partnership defaulted on the note with Home Federal. On January 27, 1987, a Notice of Default was sent to Patrick Judd, General Partner for the Limited Partnership, and you. By early March of 1987, the \$75,000 impounded under the initial terms of the loan and its accrued interest had been depleted. A formal Notice of Foreclosure was sent by Home Federal on March 12, 1987. On March 16, 1987, a foreclosure sale was

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noticed in connection with the property. As a result of the threatened foreclosure, you stand to lose over \$117,000 from this investment.

I can find no evidence of any favoritism or special treatment in connection with Home Federal's handling of the default proceedings. As with the granting of the original loan, the unfortunate default has been handled, at all times, as a pure business transaction.

Home Capital Development Corporation (hereinafter "Home Capital") is a subsidiary of Home Federal. Home Capital has been, and is currently involved, as a joint venturer in two ongoing development projects in Chula Vista; namely, El Rancho del Rey and Bonita Long Canyon. Despite innuendo to the contrary, the El Rancho del Rey property was acquired by McMillin Development and Home Capital in January of 1986, over five months after the loan transaction involving the Austin, Texas, property. McMillin and Home Capital have had an interest in the Bonita Long Canyon property since sometime in 1984.

On March 28, 1986, you filed your annual Statement of Economic Interests for the period covering January 1, 1985, through December 31, 1985. Thereafter, on November 26, 1986, after being sworn in as mayor, you filed your Assuming Office Statement of Economic Interests.

ADDITIONAL FACTS LEARNED DURING MY REVIEW

My review of relevant information relating to the background facts as outlined above has disclosed certain additional facts which I believe are important to this discussion.

First, in reviewing every Statement of Economic Interests filed by you since being elected to office, I must conclude that you have conscientiously attempted to fulfill your reporting obligations under the PRA. In fact, on a great many of your reports, you have over-reported certain investment and income information. As examples, many of your reports included information relating to your family residence and your salary as an elected official. Although not required to disclose such information, doing so can only imply an effort on your part to be thorough and comprehensive in disclosing your financial information.

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A careful review of your previous Statement of Economic Interests also leads to the conclusion that there has never been any attempt on your part to hide or conceal your interest and involvement in Texas real property. A careful observer would note that Schedule 721-C of your 1978 report listed your precise interest in "Judd & Cox, a limited partnership," with an interest in income property located in San Antonio, Texas, and your interest in "Cox, Judd & Yoder, joint tenants," which had an interest in income property in San Antonio, Texas. Schedule 721-C of your 1979 annual report also listed the San Antonio, Texas, property and went on to list your additional interests in real property located in Austin, Texas, including specifically your interest in the "Gazebo Apartments" or "Green Tree Apartments" which have been the subject of much press speculation and which are the subject of this opinion letter.

Also, Schedule D of the your 1983 annual report thoroughly disclosed income received from the sale of your investments in Texas, including income from the sale of the Green Tree Apartment complex.

Finally, I am informed by Jennie Fulasz, Chula Vista City Clerk, that after you filed your 1983 Statement of Economic Interests disclosing your investments in the Austin, Texas, property, you were informed that there was no need for you to disclose any of these interests because these interests were not located within, or within two miles, of your jurisdiction as an elected official. I am enclosing a copy of a memorandum, dated April 20, 1987, from City Clerk Jennie Fulasz in which she specifically remembers informing you that you were over-reporting in connection with your disclosure of your interests and investments in the property in Austin, Texas.

I have also been informed that you have, consistently in the past, conscientiously attempted to avoid all conflicts of interest in connection with your votes on matters pending before the City Council. Although your investments have rarely resulted in potential conflicts, I have been informed of instances in which you have abstained from voting because of a potential conflict of interest. As examples, in either 1976 or 1977 you abstained from votes related to the down zoning of property on "F" Street because of your ownership interests of certain property at 540 and 544 "F" Street. In 1983, you abstained from voting on the formation of an assessment district for Las Flores Drive because of real estate commissions you had received from Yoder/Williams and the fact that Williams owned a duplex to be included in the assessment district. In 1983-86, you abstained from voting on matters

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relating to Terra Nova because of your ownership of stock in Great American; and, in 1986, you abstained from voting on a moratorium relating to Otay Mesa development because of your interests in TMI property on Otay Mesa. Although in certain of these cases, because of the nature of your ownership interests, it may not have been necessary for you to have abstained from voting, you conscientiously did so.

Although not directly applicable to an analysis of the questions presented in this opinion letter, these additional facts learned during my thorough review of this matter are important because they establish a pattern of conduct evidencing your attitude toward compliance with the PRA. I find that your pattern of conduct and attitude toward compliance with the varied and complex provisions of the PRA to be exemplar in every respect. Unlike some elected officials, your efforts at compliance have been honest, sincere and thorough and have never evidenced any disdain or contempt for the sometimes burdensome and seemingly intrusive process of disclosing your personal interests. Your Statements of Economic Interests clearly evidence a sincere effort to comply with the provisions of the law and fulfill your obligations to the FPPC and the public.

With this background information, I can now provide you with specific answers to the specific questions you have asked.

As a result of your ownership interests in the Austin, Texas, property and your involvement in the loan secured from Home Federal, you have asked me to address and answer the following specific questions.

QUESTIONS PRESENTED, ANSWERS AND ANALYSIS

1. May you participate in voting on issues relating to developments in which a Home Capital development has an interest?

Yes. You may participate in voting on issues relating to developments in which Home Capital has an interest and you have absolutely no conflict of interest in doing so.

Although you have co-signed on a loan from Home Federal to a joint venture which owns the apartment complex in Texas and Home Capital is a wholly-owned subsidiary of Home Federal, California law specifically allows you to vote on such issues. In fact, unlike many provisions of the PRA, this law

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could not be clearer! California Government Code section 87100 states that no public official shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. Thus, having a financial interest in the decision is a specifically-stated prerequisite to the existence of a conflict of interest. Fortunately, Government Code section 87103 clearly defines a "financial interest" and specifically excludes loans of the exact type obtained from Home Federal. Section 87103 states, in relevant part, as follows:

An elected official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect distinguishable from its effect on the public generally on the official or a member of his or her immediate family or on:

- a.
- b.
- c. Any source of income . . . other than loans by commercial lending institution in the regular course of business on terms available to the public without regard to official status. (Emphasis added.)

The facts of your relationship with Home Federal fit squarely into the specific California law as stated in section 87103(c) and you, therefore, have absolutely no financial interest in any decision relating to Home Federal/Home Capital.

Even a cursory reading of the applicable law contained in the PRA relating to this loan leads to the clear conclusion that you have absolutely no conflict of interest in voting on issues relating to Home Capital. In this regard, I find the opinion memorandum, dated April 21, 1987, of Thomas J. Harron, Chula Vista City Attorney, to be absolutely correct and without any possible fault on this issue. For anyone to suggest, either directly or by innuendo, that, under California law, you have any conflict of interest in voting on issues relating to Home Capital is erroneous.

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2. As a result of your "ownership interest" in the Austin, Texas, apartment complex, namely the third trust deed, do you have a conflict of interest in connection with any votes cast on Home Capital developments?

No. The third trust deed ownership interest you possess in the Austin, Texas, apartment complex does not create any conflict of interest in connection with any votes cast on developments in which Home Capital has an interest. Furthermore, you don't even have an obligation to disclose on your Statements of Economic Interests your third trust deed ownership interest in the apartment complex.

As specifically indicated in the PRA, FPPC regulations, FPPC Manual for Statements of Economic Interests and the Instructions for Completing Schedule B of Form 721, you are not required to disclose the third trust deed ownership interest in the Austin, Texas, apartment complex. So long as issues relating to that apartment complex do not come before the Chula Vista City Council, you can never have a conflict of interest relating to that ownership interest.

California Government Code section 87202(a) states, in relevant part, as follows:

(a) Every person who is elected to an office specified in Section 87200 shall, within 30 days after assuming such office, file a statement disclosing his investments and his interests in real property.

Furthermore, California Government Code section 87203 states as follows:

Every person who holds an office specified in Section 87200 shall, each year at a time specified by commission regulations, file a statement disclosing his investments, his interests in real property and his income during the period since the previous statement filed under this section or Section 87202. The statement shall include any investments and interest in real property held at anytime during the period covered by the statement, whether or not they are still held at the time of filing.

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Fortunately, California Government Code section 82033 specifically defines "interest in real property" and, by definition, excludes all property located outside of an elected official's jurisdiction. Section 82033 states as follows:

'Interest in real property' includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is one thousand dollars (\$1,000) or more. Interests in real property of an individual includes a pro rate share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10 percent interest or greater. (Emphasis added.)

Both the FPPC's Manual for Statements of Economic Interests and the FPPC's Instructions for Completing Schedule B clearly indicate that you need only report interests in real property located in your jurisdiction.

Again, even a cursory reading of the applicable California law discloses that your third trust deed ownership interest does not raise any conflicts of interest in connection with any votes cast relating to developments in which Home Capital has any interest. To suggest otherwise is completely erroneous.

3. In light of having co-signed for a loan from Home Federal, the proceeds of which were used solely for the Austin, Texas, property do you have any conflicts of interest regarding votes on Home Capital projects?

No. As a result of having co-signed for a loan from Home Federal, you do not have any conflicts of interest in connection with any votes relating to Home Capital projects.

This question is answered by the same analysis as outlined above in connection with Question No. 1. Again, the answer to this question is clear and requires only a casual reading of the plain language of California law.

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4. Is it necessary for you to file an amendment to your Statement of Economic Interests, filed on March 30, 1984, to disclose the 1983 third trust deed on the Texas property?

No. It is not necessary for you to amend your Statement of Economic Interests, filed on March 30, 1984, to disclose the third trust deed on the Texas property, and you have absolutely no obligation to disclose the interests in future filings.

The answer to this question is based on the analysis outlined above in response to Question No. 2. Again, the answer to this question is clear and unequivocal.

5. Is it necessary for you to file an amendment to your Statement of Economic Interests filed on March 29, 1985, to disclose the 1983 third trust deed on the Texas property?

No. It is not necessary for you to amend your Statement of Economic Interests, filed on March 29, 1985, to report the third trust deed on the Texas property.

Again, the answer to this question is based upon the analysis outlined above in connection with Question Nos. 2 and 4.

6. Is it necessary for you to file an amendment to your Statement of Economic Interests, filed on March 28, 1985, to disclose the loan from Home Federal?

No. It is not necessary for you to amend your Statement of Economic Interests, filed on March 29, 1985, to disclose the loan from Home Federal, and you were under no obligation to disclose the loan at that time of the filing.

Although the Statement of Economic Interests was filed in 1985, it actually covers the period from January 1, 1984, through December 31, 1984. Therefore, under no circumstances were you required to disclose any activity, including the loan from Home Federal, which occurred during the calendar year of 1985.

7. Is it necessary for you to file an amendment to your Statement of Economic Interests, filed on March 23, 1986, to disclose the loan from Home Federal?

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No. In my opinion, it is not necessary for you to amend your Statement of Economic Interests, filed on March 28, 1986, to disclose the loan from Home Federal.

Based upon all of my research and analysis, I find no rational or logical basis for requiring any disclosure of the loan from Home Federal. Although certain loans which can provide the basis for a potential conflict of interest are required by the PRA to be disclosed, there is no rational basis for requiring disclosure of the loan from Home Federal. Please allow me to explain.

First, it is abundantly clear, as outlined above, that, by law, it is not necessary for you to disclose the third trust deed ownership interest in the Texas property. Second, since the loan was obtained from a commercial lending institution in the regular course of business on terms available to the public without regard to your official status, the loan, pursuant to Government Code section 87103(c) can never provide the basis for a conflict of interest or even a potential conflict of interest. (Therefore, neither the third trust deed ownership interest or the loan on the Texas property can ever provide the basis for a conflict of interest!) Third, you merely co-signed for the loan and the proceeds of the loan were used in connection with the Texas property. Fourth, as a result of the loan, you did not receive any principal reduction of your existing \$117,000 note in connection with the property. Finally, and most important, the sole and entire purpose of disclosure of economic interests on the Statement of Economic Interests is to prevent conflicts of interest. This last point is clear and well-documented, as stated in the following paragraph.

Government agencies, including the FPPC, have no legal or legitimate interest in the disclosure of private information from public officials for the pure sake of disclosure. Since such disclosures amount, to a certain extent, to an invasion of an elected official's right to privacy, the need for disclosure must be strong and it must be rationally related to some legitimate governmental purpose. In connection with the disclosure of economic interests by elected officials, the PRA and the FPPC have historically and consistently supported such disclosure on the sole ground that conflicts of interest must be prevented. Both the law and the commission are candid in admitting that the sole justification for whatever invasion of privacy occurs whenever an elected official is required to disclose financial interests is the prevention of conflicts of interest.

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The PRA, in its statement of "purposes," specifically justifies disclosure of economic interests because of the need to prevent conflicts of interest. Government Code section 81002(c) states as follows:

(c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.

Also, the FPPC's informational Manual for Statements of Economic Interests clearly states as follows:

WHY MUST A STATEMENT OF ECONOMIC INTERESTS
BE FILED?

The Political Reform Act is intended to prevent conflicts of interest by requiring public officials such as yourself to disclose financial interests which could foreseeably cause conflicts. . . .

In addition, the FPPC's Form 721, Statement of Economic Interests, begins with the following "Important Notice to Filers":

The Political Reform Act is intended to prevent conflicts of interest by requiring public officials such as yourself to disclose financial interests which could foreseeably cause conflicts. . . .

Finally, the most recent FPPC Bulletin, Vol. 13, No. 4, published by the FPPC in April of 1987, contains, on page 8, a comprehensive rationale for the filing of Statement of Economic Interests. In fact, this very topical article published by the Commission and its Chairman, John Larson, is entitled "WHY DO I HAVE TO FILE A STATEMENT OF ECONOMIC INTERESTS?" The article, in addressing the potential invasion of privacy resulting from the disclosure of personal finances, articulately identifies the prevention of conflicts of interest as the sole basis for the disclosure requirements. Nowhere does the article suggest that economic disclosure should be made for the mere sake of interest on the part of the FPPC or the public, nor does the article articulate any basis for disclosure other than the prevention of conflicts of interest.

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Although a complete copy of this important recent statement from the FPPC is enclosed for your information, the article states, in relevant part, as follows:

The conflict of interest provisions of the Political Reform Act have a pervasive impact throughout California. Over 50 thousand state and local government officials, both elected and appointed, are required to file statements of economic interests disclosing investments, interests in real property and sources of income, including gifts.

When the Political Reform Act was first adopted as a statewide initiative in 1974, the conflict of interest provisions generated considerable controversy. Some public officials, particularly at local levels of government, argued that the requirements to disclose personal finances constituted an invasion of privacy, and there were predictions that numerous qualified, public spirited individuals would refuse government service.

Nevertheless, when newly elected or appointed officials are first confronted with the requirement to file statements of economic interests, and when large numbers of officials must file their annual financial reports in March and April, a common question arises: 'What is the purpose of these requirements?'

The answer is found in the Act itself, which contains the declarations and purposes of the initiative as adopted by the voters:

State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth;

Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests

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or the financial interests of persons who have supported them;

Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.

Public disclosure is the heart of the entire Political Reform Act, including the conflict of interest provisions. Statements of economic interests serve as reminders to public officials and assist them as well as the general public in determining when a conflict of interest may exist. Moreover, the disclosure of personal finances on statements of economic interests is the primary basis for ensuring compliance with the Act's requirements that public officials must disqualify themselves from making or participating in governmental decisions that could materially affect their personal finances.

In short, statements of economic interests are intended to ensure that a fundamental premise of the Political Reform Act is fulfilled: That all state and local government officials will serve Californians equally and make official decisions without regard to personal financial interests.

A very technical argument can be constructed to support the conclusion that loans of this type should be reported. Although I will outline this technical argument for you, I do not believe that it finds any rational basis in the purposes of the PRA or the purposes for financial disclosure.

Despite the many statements, as outlined above, for the purpose of requiring financial disclosure, it could be argued on technical grounds that section 82030 of the PRA may require disclosure of this kind of loan. Specifically, as indicated above, section 87203 requires an officeholder to disclose "his investments, his interests in real property and his income during the period since the previous statement

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filed." Section 82030 of the PRA defines income to include outstanding loans, but contains a specific exception. The exception contained in section 82030(b)(8) states as follows:

(b) 'Income' also does not include:

(8) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status if:

(A) Used to purchase, refinance the purchase of, or for improvements to, the principal residence of filer; or

(B) The balance owed does not exceed \$10,000 (Ten Thousand Dollars).

Thus, by combining the provisions of section 87203 with the provisions of section 82030, and reviewing the exclusion contained in section 82030(b)(8)(A) and (B), a very technical argument can be constructed to the effect that loans of this type should be reported.

However, as outlined above, there is certainly no rational or stated purpose for requiring the disclosure of the loan from Home Federal and, under the circumstances, it may be constitutionally prohibited to do so. Frankly, given the fact that the Home Federal loan can never provide the basis for even a potential conflict of interest, there is no rational basis for requiring disclosure. There is no rational basis supporting the invasion of privacy which would pass a constitutional attack on the requirement to disclose such information.

In other words, based on the very purpose for requiring financial disclosure and based on the current status of the conflict of interest laws relating to this loan, the exception contained in section 82030(b)(8)(A) and (B) of the PRA should not be so narrowly defined, but rather should be

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broadened to correlate with the conflict of interest provision contained in section 87103(c). Specifically, section 82030(b)(8) should end on the third line after the words "official status," and "if" and subsections (A) and (B) should be removed from this definitional section. Otherwise, in my opinion, this current inconsistent and unsupportable disclosure requirement would not pass constitutional muster and survive a legitimate constitutional challenge.

8. Is it necessary for you to file an amendment to your Assuming Office Statement of Economic Interests, filed on November 26, 1986, to disclose the loan from Home Federal?

No. It is not necessary for you to amend your Statement of Economic Interests, filed on November 26, 1986, to disclose the loan from Home Federal. You were under absolutely no obligation to report the loan from Home Federal on this Statement of Economic Interests. To suggest otherwise, either directly or by innuendo, would be completely false.

Pursuant to Government Code section 87202(a), the FPPC's information Manual for Statements of Economic Interests and the FPPC's instructions regarding Form 721, Statements of Economic Interests, there was clearly no requirement for you to disclose the loan from Home Federal on your Assuming Office Statement of Economic Interests, filed on November 26, 1986.

9. Is it necessary to disclose, on Schedule C of your future Statements of Economic Interests, your "ownership interest" in the Texas property, namely your third trust deed?

No. It is not necessary for you to disclose on your future Statements of Economic Interests your third trust deed ownership interest in the Texas property.

The analysis supporting the answer to this question is the same as the analysis contained in connection with Question Nos. 2, 4 and 5 above.

10. Is it necessary to disclose on your future Statements of Economic Interests, the loan obtained from Home Federal?

No. In my opinion, there is no legal or rational basis for you to disclose the loan obtained from Home Federal on your future Statements of Economic Interests.

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The analysis which supports the answer to this question is fully outlined in connection with the discussion of Question No. 7 above.

11. Given the following conditions: (a) it is not necessary for you to disclose the "ownership interest" in the Texas property, (b) the loan was obtained from a commercial lending institution in the regular course of business on terms available to the public without regard to your official status, (c) the proceeds of the loan were used in connection with the Texas property, (d) you did not receive any principal reduction of your note, (e) the purpose of disclosure is to prevent conflicts of interest, and (f) California Government Code section 87103 prevents you from ever having a conflict of interest in connection with the loan from Home Federal, why would disclosure of the loan be required on your future Statements of Economic Interests?

There is no constitutional, justifiable reason why disclosure of the Home Federal loan should be required on your future Statements of Economic Interests.

Again, a disclosure for the sake of curiosity is not the issue. In fact, such irrationally-based disclosure requirements would not, in my opinion, survive a constitutional challenge. Therefore, as outlined thoroughly above in the analysis of Question No. 7, although a technical argument can be constructed supporting disclosure, there are no justifiable reasons to require disclosure of the Home Federal loan on your future Statements of Economic Interests. The analysis in connection with Question No. 7 above is directly applicable here.

12. Are there some basic policy considerations for requiring disclosure of interests which cannot, by law, constitute the basis for a conflict of interest?

There are no basic policy considerations for requiring disclosure of interests which cannot, by law, constitute the basis for a conflict of interest.

While serving as the Chairman of the Fair Political Practices Commission from 1983 through 1985, I became very familiar with the basic policy considerations underlying the PRA which are used by the FPPC in supporting its actions, including its requirements relating to the area of conflicts of interest. At no time has the FPPC based any disclosure requirement on mere curiosity or even a desire to determine the

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wealth and/or investments of elected officials. As recently reiterated by the Commission and Chairman Larson, the sole and only constitutionally permissible basis for requiring disclosure of such information is the prevention of conflicts of interest. Since, in your specific case, the loan from Home Federal can never form the basis for a conflict of interest, there are absolutely no policy considerations which support disclosure of that loan.

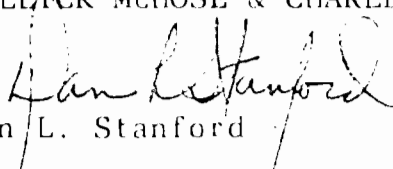
CONCLUSION

In conclusion, you have not engaged in any conflicts of interest in any votes relating to Home Federal/Home Capital's interests in either the El Rancho del Rey or Bonita Long Canyon developments. Second, you have not been, and are not currently, required to disclose your ownership interest in the Texas property on your Statements of Economic Interests. Finally, in my opinion, there is no constitutionally permitted basis for requiring disclosure of the loan from Home Federal on your Statements of Economic Interests.

It is my sincere hope that this analysis of these issues, and my conclusions will be of help to you in understanding your obligations under the Political Reform Act. If, at any time, I can answer any other questions relating to your obligations under the Act, please do not hesitate to contact me.

Very truly yours,

LILLICK McHOSE & CHARLES


Dan L. Stanford

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS
FOR A VARIABLE INTEREST RATE

NOTE

U.S. \$ 2,200,000.00

9037603

Loan No.

DATED August 2, 1985
San Diego, California

1. PROMISE TO PAY

GREGORY R. COX and Green Tree, Ltd., a California limited partnership (collectively, "Borrower") will pay Home Federal Savings and Loan Association, a federally chartered stock savings and loan association ("Lender"), or whomever Lender orders Borrower to pay, the Principal Amount together with interest at the rate specified below on the unpaid Principal Amount from the date of disbursement until paid. Unless this Note is otherwise endorsed, the date of this Note will be the date of disbursement.

2. INTEREST

Interest will accrue on unpaid portions of the Principal Amount from the date of disbursement at the annual rate (adjustable as described below) of 2.75 percent over the Index (defined below).

3. INDEX

The index ("the Index") used in computing the interest rate is the Monthly Weighted Average Cost of Funds for Eleventh District Savings and Loans as published by the Federal Home Loan Bank of San Francisco. If the Index is not published, a substantially similar index will be used as promulgated by the Federal Home Loan Bank Board or its successors. If such a similar index is not so promulgated by the Federal Home Loan Bank Board or its successor, Lender will select a substantially similar index which will not be within the arbitrary control of Lender. The Initial Index is 9.565 as published as of July 26, 1985, 1985. Accordingly, the Initial Interest Rate is 12.315 percent.

4. INTEREST RATE ADJUSTMENTS

Every month on the date the payment is due, beginning one month after the date of disbursement, a new interest rate will be established by adding 2.75 percent to the then most current Index. However, over the term of the loan the interest rate will never exceed 5 percent over the Initial Interest Rate, nor will it ever be less than 10 percent per annum.

5. MONTHLY PAYMENTS

5.1 YEAR ONE. Beginning ~~October 1, 1985~~ September 20, 1985 and continuing thereafter on the first day of each successive calendar month until and including the month which is immediately prior to the first anniversary of the date of disbursement, monthly payments in the amount of \$23,164.31 each will be due which payments will be equal to accrued interest on the Principal Amount at the rate of the Initial Interest Rate.

5.2 PAYMENT ADJUSTMENTS. Beginning on the first anniversary of the date of disbursement and continuing thereafter on each anniversary of the date of disbursement until and including

the ninth anniversary of the date of disbursement, the amount of the monthly payment due during the successive year will be adjusted to be equal to the equal monthly amounts necessary to fully amortize the unpaid balance, including deferred interest, and interest on unpaid principal at the rate applicable for the month in which the payment adjustment is made as described in Paragraph 4 over the then remaining initial amortization period. The initial amortization period is 30 years. No annual payment adjustment will result in an increase or a decrease in monthly payments by more than 7.5 percent of monthly payments due during the previous 12-month period. However, the payment adjustment on the fifth anniversary will not be subject to this limitation.

6. DEFERRED INTEREST

Monthly payments may be insufficient to pay the total amount of the monthly accrued interest. The amount of accrued interest that is not paid each month is deferred interest. Any deferred interest will be added to the Principal Amount and will accrue interest at the same rate as the Principal Amount. However, at any time, the outstanding Principal Amount plus deferred interest reaches or will reach \$2,773,550 with the application of the next payment, Borrower will pay, in addition to Borrower's regular monthly payment, any amount necessary to prevent further deferred interest from being added to the loan.

7. MATURITY

Any sums remaining unpaid under this Note will be due on the tenth anniversary of the date of disbursement.

8. LOCATION AND APPLICATION OF PAYMENTS

All payments and charges are due at 625 Broadway, San Diego, California 92101, or such other place as Lender may designate. Each payment will be applied in the following order: (1) interest currently due; (2) deferred interest; (3) unpaid Principal Amount; (4) late charges; (5) other charges under this Note.

9. LATE CHARGE

Borrower will pay a late charge of 6 percent of each installment not received by Lender within 10 days after it is due. The late charge is a reasonable estimate of the damages Lender will incur as result of the delinquent payment.

10. PREPAYMENT

Borrower will pay a prepayment penalty equal to 180 days' interest at the then existing interest rate on any prepayment in excess of the scheduled monthly payment. However, Borrower may prepay this Note in full or in part without incurring a prepayment penalty (i) during the 60 days after the effective date of any payment adjustment on which monthly payments are increased over the initial monthly payment amount and (ii) during the 90 day period immediately preceding the maturity date. Any prepayment will be applied in the same manner as regular payments under Paragraph 8 of this Note.

11. DEFAULT

If Borrower fails to pay any installment when due, or if Borrower fails to comply with any of the agreements in this Note or in the Deed of Trust, or any agreement secured by the Deed of Trust securing the payment of this Note, the entire sum, accrued interest and late charges will become immediately due at Lender's option, and the power of sale contained in the Deed of Trust may then be used.

12. SECURITY

To secure the payment of this Note, Borrower is giving Lender a Deed of Trust. Lender has the right to accelerate the due date of this Note according to the following provision in the Deed of Trust:

"9. Transfer of the Property; Assumption. Lender may declare all the sums secured by this Deed of Trust to be immediately due and payable if any portion of the Secured Property or any interest in the Secured Property is sold or transferred voluntarily or involuntarily before obtaining Lender's written approval. For the purposes of this provision a transfer includes, (a) if the Borrower includes a partnership, the termination of general partner's interest or the assignment or transfer in the aggregate of more than 50 percent of a general partner's interest, (b) if the Borrower includes a corporation, the transfer, in the aggregate of more than 40 percent of the corporate stock and (c) if the Borrower includes a trust, a transfer, in the aggregate, of more than 40 percent of the beneficial interest in the trust.

However, written approval is not required for (a) the creation of a lien or encumbrance subordinate to this Deed of Trust which does not relate to a transfer of rights of occupancy in the secured Property; (b) the creation of a purchase money security interest for household appliances; (c) the transfer of title by devise, descent or by operation of law upon the death of a joint tenant; (d) the grant of a leasehold for three years or less which does not contain an option to purchase; (e) a transfer to relative resulting from the death of a Borrower; (f) a transfer where the spouse or children of Borrower become an owner of the Secured Property; (g) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of Borrower becomes an owner of the Secured Property; or (h) a transfer into an inter vivos trust in which Borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the Secured Property.

If Lender exercises this right to accelerate, Lender will mail Borrower notice of acceleration at Borrower's address according to Lender's records. Such notice will provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such items before the expiration of such period, Lender may without further notice or demand on Borrower, use any remedies permitted by paragraph 13."

13. SEVERABILITY AND USURY

The invalidity, or unenforceability in particular circumstances, of any provision of this Note shall not extend beyond such provision or such circumstances and no other provision of this instrument shall be affected thereby. It is the intention of the parties hereto to comply with applicable usury laws accordingly, it is agreed that notwithstanding any provisions to the contrary in this Note or any instrument evidencing the Indebtedness (defined in the Deed of Trust), in the Deed of Trust or in any of the documents or instruments securing payment of the Indebtedness or otherwise relating thereto, in no event shall this Note or such documents require the payment or permit the collection of interest in excess of the maximum amount permitted by such laws. If any such excess of interest is contracted for, charged or

received, under this Note or any instrument evidencing the Indebtedness, under this Deed of Trust or under the terms of any of the other documents securing payment of the Indebtedness or otherwise relating thereto, or in the event the maturity of any of the Indebtedness is accelerated in whole or in part, or in the event that all or part of the principal or interest of the Indebtedness shall be prepaid, so that under any of such circumstances, the amount of interest contracted for, charged or received, under this Note or any instruments evidencing the Indebtedness, under the Deed of Trust or under any of the instruments securing payment of the Indebtedness or otherwise relating thereto, on the amount of principal actually outstanding from time to time under this Note and other instruments evidencing the Indebtedness, shall exceed the maximum amount of interest permitted by applicable usury laws, then in any such event (a) the provisions of this paragraph shall govern and control, (b) neither Borrower nor any other person or entity now or hereafter liable for the payment of this Note or any instrument evidencing the Indebtedness shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest permitted by applicable usury laws, (c) any such excess that may have been collected shall be either applied as a credit against the then unpaid principal amount hereof or refunded to Borrower, at the holder's option, and (d) the effective rate of interest shall be automatically reduced to the maximum lawful contract rate allowed under applicable usury laws as now or hereafter construed by the courts having jurisdiction thereof. It is further agreed that without limitation of the foregoing, all calculations of the rate of interest contracted for, charged or received under this Note, or any instrument evidencing the Indebtedness, under the Deed of Trust or under such other documents that are made for the purpose of determining whether such rate exceeds the maximum lawful contract rate, shall be made, to the extent permitted by applicable laws by amortizing, prorating, allocating the spreading in equal parts during the period of the full stated term of the loan evidenced by this Note or the instruments evidencing the Indebtedness, all interest at any time contracted for, charged or received from Borrower or otherwise by the holder or holders hereof in connection with such loan.

14. WAIVER OF RIGHTS

14.1 DEMAND; NOTICE OF DISHONOR; PROTEST. Borrower waives the rights to require Lender to do the following: (1) demand payment of amount due (known as "presentment"); (2) give notice that amounts due have not been paid (known as "notice of dishonor"); (3) obtain an official certification of nonpayment (known as a "protest"); (4) notice of intention to accelerate. Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to Lender if borrower fails to keep my promises under this Note, or who signs this Note to transfer it to someone else also waives there rights. These persons are known as "guarantors, sureties, and endorses."

14.2 VALUATION AND APPRAISEMENT. Borrower waives all relief under any applicable valuation and appraisal laws.

15. RECONVEYANCE FEES

Borrower will pay the trustee named in the Deed of Trust, or any successor trustee, any partial or full reconveyance fee(s) as provided in the Deed of Trust.

16. OTHER CHARGES

If Lender (i) commences a judicial action or nonjudicial proceeding on this Note or the Deed of Trust (including but not limited to judicial or trustee's power-of-sale foreclosure) with or without instituting litigation, to enforce any of the provision

of this Note, (ii) engages an attorney to appear in any judicial action or nonjudicial proceeding commenced by any person concerning this Note or the Deed of Trust, including but not limited to actions or proceedings (a) under the bankruptcy laws of the United States or any state, (b) for condemnation, (c) under any applicable Probate Code, (d) in connection with any state or federal tax lien or (e) involving mechanics' or materialmen's liens or stop notices, or (iii) engages an attorney to enforce the assignment of rents on property serving as security for this Note, Borrower will pay Lender's reasonable attorneys' fees (including Lender's in-house attorney's fees) and all costs and expenses incurred by Lender incidental to such proceeding.

17. BALLOON PAYMENT DISCLOSURE

This loan is payable in full at the end of 10 years. Borrower must repay the entire unpaid Principal Amount of the loan and unpaid interest then due. Lender is under no obligation to refinance the loan at that time. Borrower will be required to make payment out of other assets Borrower may own, or Borrower will have to find a lender willing to lend it the money at the prevailing market rates, which may be considerably higher or lower than the interest rate on this loan. If Borrower refinances this loan at maturity with Lender, it may have to pay some or all closing costs normally associated with a new loan.

18. LOAN AGREEMENT

This Note and the Deed of Trust are subject to the provisions of that certain Loan Agreement dated, for reference purposes only, as entered into between Borrower and Lender for the loan evidenced hereby.

19. JOINT AND SEVERAL LIABILITY

If Borrower includes more than one individual or entity each such individual and entity will be jointly and severally liable for all obligations evidenced by this Note or secured by the Deed of Trust.

20. CONTROLLING LAW

This Note has been executed in the County of San Diego, State of California and shall be controlled by and interpreted according to the applicable laws of the State of California, except to the extent that applicable federal laws and regulations are in conflict, in which case, such applicable federal laws and regulations shall control.

Borrower:

GREEN TREE LTD.,
a California limited partnership

By: 

Patrick A. Judd
General Partner


Gregory R. Cox

DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THE STATE OF TEXAS

§

COUNTY OF TRAVIS

§

7735 * 31.00 03957815
KNOW ALL MEN BY THESE PRESENTS:

GREEN TREE LTD., a California Limited Partnership and Gregory R. Cox (collectively, "Borrower"), for and in consideration of the Indebtedness described in this Deed of Trust, Assignment of Rents and Security Agreement ("Deed of Trust"), grants, bargains, sells and conveys, in trust, unto DALE E. HAWLEY, of 625 Broadway, Suite 735, San Diego County, California, 92101, as trustee and all substitute trustees, all such trustees being collectively referred to as ("Trustee"), and unto his or their successors and assigns, forever, for the benefit of Beneficiary, HOME FEDERAL SAVINGS AND LOAN ASSOCIATION, a federally chartered stock savings and loan association ("Lender"), having its home office at 625 Broadway, San Diego, California, 92101, the property situated in the County of TRAVIS, STATE OF TEXAS, all as described in the attached Exhibit 1 incorporated into this Deed of Trust as though fully set forth. The property described in Exhibit 1 consists of a leasehold interest ("the Groundlease") held by Green Tree Ltd. and a reversionary fee simple interest held by Gregory R. Cox.

TOGETHER WITH all rights, titles, interests, estates, reversions and remainders owned and to be owned by Borrowers in and to the above described premises and in and to the properties covered hereby and all lands owned or to be owned by Borrowers next or adjacent to any land herein described or herein mentioned; all buildings and improvements now or hereafter located on the lands herein described or mentioned; all rights, titles and interests now owned or hereafter acquired by Borrowers in and to all easements, streets and rights-of-way of every kind and nature adjoining the said lands and all public or private utility connections thereto and all appurtenances, servitudes, rights, ways, privileges and prescriptions thereunto; all goods, equipment, fixtures, inventory, machinery, furniture, furnishings and other personal property that is owned or hereafter acquired by Borrowers and now or hereafter affixed to, or located on, the above described real estate and used or usable for any present or future operation of any building or buildings now or hereafter affixed to, or located on, the above described real estate and used or usable for any present or future operation of any building or buildings now or hereafter located on said lands, including without limitation, all rights, titles and interests of Borrowers in and to any such personal property that may be subject to any title retention or security agreement superior in lien or security interest to the lien or security interest of this Deed of Trust; all rights, titles and interests of Borrowers in and to all timber to be cut from the real estate covered hereby and all minerals in, under, and upon, produced and to be produced from said real estate; and without limitation of the foregoing, any and all rights, rents, revenues, benefits, leases, contracts, accounts, general intangibles, money, instruments, documents, tenements, hereditaments, and appurtenances now or hereafter owned by Borrowers and appertaining to, generated from, arising out of or belonging to the above-described properties or any part thereof (all of the foregoing being referred to collectively as the "Secured Property").

To have and to hold the Secured Property unto Trustee, his successors in this trust and his assigns, forever, and Borrowers do hereby bind Borrowers, their respective heirs, legal representatives, successors and assigns, to warrant and forever defend the Secured Property unto Trustee, his successors and assigns, forever, against the claim or claims of all persons whomsoever claiming or to claim the same, or any part thereof.

This conveyance is made in trust, however, to secure and enforce the payment of a promissory note ("the Note") of even date herewith, executed by Borrower and payable to the order of Lender in the original principal amount of \$2,200,000.00 bearing interest at the rate therein stated, with final maturity being ten years after the date of disbursement. The Note provides in effect, that if certain defaults occur, the unpaid principal thereof and all accrued unpaid interest may be declared due and payable, at the holder's option, prior to the stated maturity thereof and providing further for the payment of attorneys' fees and other expenses of collection under certain circumstances, and to secure the performance of all covenants and agreements of Borrowers herein.

REAL PROPERTY RECORDS
Travis County, Texas

LCU4:1021:7/18/85

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This Deed of Trust shall secure, in addition to the Note, all funds hereafter advanced by Lender to or for the benefit of Borrower, as contemplated by any covenant or provision herein contained or for any other purpose, contemplated hereby. All of the foregoing, including all amounts payable at the above stated address of Lender or at such other place as Lender may hereafter direct in writing; and, unless otherwise provided in the instrument evidencing the Indebtedness, shall bear interest at the same rate per annum as the Note bears, from date of accrual of the Indebtedness until paid. In addition, any and all attorneys' fees and expenses of collection payable under the terms of the Note shall be and constitute a part of the Indebtedness. This Deed of Trust shall also secure all renewals, rearrangements and extensions of any of the Indebtedness.

This Deed of Trust secures, in addition to the foregoing, all obligations of either Borrower under the Groundlease as well as any tenant lease affecting the Secured Property.

In order to better secure payment of the Indebtedness, and to secure performance of Borrowers' covenants and agreements set forth herein, Borrower agrees with Lender and with Trustee as follows:

1. PAYMENTS OF THE INDEBTEDNESS. Borrower shall pay all of the Indebtedness, together with the interest and other appurtenant charges thereon, when the same shall become due, in accordance with the terms of the Note and all other instruments evidencing the Indebtedness or evidencing any renewals, rearrangements or extensions of the same, or any part thereof.

2. VALID TITLE AND BORROWER'S LEGAL EXISTENCE. Gregory R. Cox represents and warrants that it has in its own right, good and indefeasible title in fee simple to the above described land subject only to the Groundlease, tenant leases and other items previously approved by Lender. Both Gregory R. Cox and Green Tree Ltd. represent and warrant that Green Tree Ltd. owns a valid and subsisting interest as lessee under the Groundlease, that the Groundlease is in full force and effect, there are no defaults thereunder and no event has occurred which, with the passage of time and/or after notice will result in such a default, that the Groundlease is subject to no liens or encumbrances of any kind and is prior to all liens on the fee interest except those as previously approved by Lender. Green Tree Ltd. will perform or cause to be performed all of the covenants and conditions required to be performed by it under the Groundlease, will do all things necessary to preserve its unimpaired rights thereunder, and will not enter into any agreement modifying or amending the Groundlease or releasing lessor thereunder from any obligations imposed upon it thereby. If Green Tree Ltd. receives a notice of default under the Groundlease it shall immediately cause a copy of the notice to be sent by certified United States mail to Lender. If Borrower fails to perform any such covenants under either the Groundlease or any other lease affecting the Secured Property, Lender will have the right, at its option, to perform such covenants on behalf of Borrower or to declare, with or without notice, all sums secured by this Deed of Trust to be immediately due and avail itself of any and all remedies provided in the Note or, in this Deed of Trust in the event of default. If Lender exercises its option to perform such covenant on behalf of Borrower, Lender will be entitled to recover from Borrower immediately upon demand any expenses incurred or amounts advanced in performing such covenant(s), together with interest at the highest lawful rate per annum now permitted by written contract under applicable law from the date such expense is incurred or advance is made. If Borrower fails to repay Lender any such expense or advance with such interest, Lender may, at its option, with or without notice, declare all sums secured by this Deed of Trust to be immediately due and avail itself of any and all remedies provided in the Note or this Deed of Trust. Borrower represents that the Secured Property is free from encumbrances superior to the liens and security interests hereby created, except those previously approved by Lender and that Borrower has full right and authority to make this conveyance. Borrower agrees to maintain and preserve its legal existence and all related rights, franchises and privileges. Borrower shall at all times comply with and perform all obligations under any applicable laws, statutes, regulations or ordinances relating to the Secured Property and Borrower's use and operation thereof.

3. INSURANCE. Borrower shall keep all buildings and other property covered by this Deed of Trust insured against fire and lightning with extended coverage and against such other risks as Lender may require, all in amounts approved by

Lender not less than 100% of full replacement value, such insurance to be written in form and with companies approved by Lender, with loss made payable to Lender pursuant to the Texas standard mortgagee clause, without contribution, and shall deliver the policies of insurance to Lender promptly as issued. Such policies shall provide, by way of riders, endorsements or otherwise that the insurance provided thereby shall not be terminated, reduced or otherwise limited regardless of any breach of the representations and agreements set forth therein and that no such policy shall be cancelled, endorsed or amended to any extent unless the issuer thereof shall have first given Lender at least 30 days' prior written notice. In case Borrower fails to furnish such policies, Lender at its option may procure such insurance at Borrowers' expense. All renewal and substitute policies of insurance shall be delivered to the office of Lender, premiums paid, at least ten (10) days before termination of the insurance protection replaced by such renewal or substituted policies. In case of loss, Lender, at its option, shall be entitled to receive and retain the proceeds of the insurance policies, applying the same toward payment of the indebtedness as Lender shall see fit, or at Lender's option, Lender may pay the same over wholly or in part to Borrower for the repair of improvements or for the erection of new improvements in their place, or for any other purpose satisfactory to Lender, but Lender shall not be obligated to see to the proper application of any amount paid over to Borrower. If Lender elects to allow payment of all or part of such proceeds to Borrower, such payments shall be disbursed on such terms and subject to such conditions as Lender may specify. Borrower agrees that regardless of whether any insurance proceeds payable to it are sufficient to pay the costs of repair and restoration of the Secured Property, Borrower shall promptly commence and carry out the repair, replacement, restoration and rebuilding of any and all of the Secured Property damaged or destroyed by fire or other casualty so as to return same, to the extent practicable, to its condition immediately prior to such damage to or destruction thereof. Borrower shall not permit or carry on any activity within or relating to the Secured Property that is prohibited by the terms of any insurance policy covering any part of the Secured Property. In the event of a foreclosure of this Deed of Trust, the purchaser of the Secured Property shall succeed to all the rights of Borrower, including any right to unearned premiums, in and to all policies of insurance assigned and delivered to Lender pursuant to the provisions of this Deed of Trust. Regardless of the types or amounts of insurance required and approved by Lender, Borrower shall assign and deliver to Lender all policies of insurance that insure against any loss or damage to the Secured Property, as Collateral and further security for the payment of the Indebtedness. Borrower shall also obtain and maintain in force and effect such liability and other insurance policies and protection as Lender may from time to time specify.

4. TAXES AND ASSESSMENTS. Borrower shall pay all taxes and assessments against the Secured property, including, without limitation, all taxes in lieu of ad valorem taxes, as the same become due and payable. In the event of the passage after date of this Deed of Trust of any law by the State of Texas deducting from the mortgaged property for the purposes of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust, or Indebtedness secured thereby, for State or local purposes, or the manner of the operation of any such taxes so as to affect the interest of Lender, then and in such event, Borrower shall bear and pay the full amount of such taxes. If Borrower fails to pay any such taxes and assessments, including, without limitation, taxes in lieu of ad valorem taxes and taxes against this Deed of Trust or the Indebtedness secured hereby, Lender may pay the same, together with all costs and penalties thereon, at Borrower's expense; however, if for any reason payment by Borrower of any such new or additional taxes would be unlawful or constitute usury or render the Indebtedness wholly or partially usurious under any of the terms or provisions of the Note or this Deed of Trust, or otherwise, Lender may, at its option, declare the Indebtedness with all accrued interest thereon to be immediately due and payable, or Lender may, at its option, pay the amount or portion of such taxes as renders the Indebtedness unlawful or usurious, in which event Borrower shall concurrently therewith pay the remaining lawful and nonusurious portion or balance of said taxes. Notwithstanding the provisions of this Paragraph 4, Borrower may, in good faith contest the validity or amount of any tax or assessment provided it gives Lender notice of such contest and posts adequate surety as required by law.

5. CONDEMNATION. All judgments, decrees and awards or payment for injury or damage to the Secured Property, and all awards pursuant to proceedings for condemnation thereof, including interest thereon, are hereby assigned in their

entirety to Lender, who shall apply the same first to reimbursement of all costs and expenses incurred by Lender in connection with such condemnation proceeding and the balance to the Indebtedness in such manner as Lender may elect; and Lender is hereby authorized, in the name of Borrower, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. If Lender elects to allow a portion of the proceeds of any condemnation proceeding to be paid to Borrower to be used in rebuilding, restoration or repair of the Secured Property, then the disbursement of such proceeds shall be on such terms and subject to such conditions as Lender may specify. Borrower shall promptly notify Lender of the institution or threatened institution of any proceeding for the condemnation of any of the Secured Property. Lender shall have the right to participate in any such condemnation proceeding.

6. DEFENSE OF TITLE. If while this trust is in force the title of Borrower to the Secured Property, or any part thereof, shall be endangered or shall be attacked directly or indirectly, Borrower hereby authorizes Lender, at Borrower's expense, to take all necessary and proper steps for the defense of said title, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title.

7. COSTS AND EXPENSES. All costs and expenses incurred in performing and complying with the provisions of this Deed of Trust shall be promptly paid by Borrower. If Lender pays out any money chargeable to Borrower, or subject to reimbursement by Borrower under the terms of this Deed of Trust, Borrower shall repay the same to Lender immediately at the place where the Note or other Indebtedness secured by this Deed of Trust is payable, together with interest thereon at the lesser of (i) the then effective rate of interest under the Note or (ii) the maximum lawful rate of interest permitted by applicable law to be charged to and paid by Borrower from and after the date of Lender's making such payment. The sum of each such payment (together with interest) shall be added to the Indebtedness hereby secured and thereafter shall form a part of the same; and it shall be secured by this Deed of Trust and by subrogation to all the rights of the person, corporation, or body politic receiving such payment.

8. MAINTENANCE. Borrower shall keep every part of the Secured Property in firstclass condition and representing a first-class appearance, make promptly all repairs, renewals and replacements necessary to such end, prevent waste to any part of the Secured Property, and do promptly all else necessary to such end; and Borrower shall discharge all claims for labor performed and material furnished therefor, and shall not suffer any lien of mechanics or materialmen therefor to attach to any part of the Secured Property. However, Borrower may in good faith contest the validity of any mechanics' or materialmen's lien if it posts adequate security for such contest. Borrower shall guard every part of the Secured Property from removal, destruction and damage, and shall not do or suffer to be done any act whereby the value of any part of the Secured Property may be lessened. No building or other property now or hereafter covered by the lien of this Deed of Trust shall be removed, demolished or materially altered or enlarged, nor shall any new building be constructed, without the prior written consent of Lender. Lender and its agents or representatives shall have access to the Secured Property at all reasonable times in order to inspect same and verify Borrower's compliance with its obligations under this Deed of Trust. Borrower shall not, without prior written approval of Lender (which will not be unreasonably withheld), grant, convey or otherwise create or permit to be created, any type mortgage, lien, security interest or other encumbrance on any of the Secured Property, regardless whether same shall be inferior and subordinate to the liens and security interests of Lender in and to the Secured Property.

9. TRANSFER OF THE PROPERTY; ASSUMPTION. Lender may declare all the sums secured by this Deed of Trust to be immediately due and payable if any portion of the Secured Property or any interest in the Secured Property is sold or transferred voluntarily or involuntarily before obtaining Lender's written approval. For the purposes of this provision a transfer includes, (a) if the Borrower includes a partnership, the termination of general partner's interest or the assignment or transfer in the aggregate of more than 50 percent of a general partner's interest, (b) if the Borrower includes a corporation, the transfer, in the aggregate of more than 40 percent of the corporate stock and (c) if the Borrower includes a trust, a transfer, in the aggregate, of more than 40 percent of the beneficial interest in the trust.

However, written approval is not required for (a) the creation of a lien or encumbrance subordinate to this Deed of Trust which does not relate to a transfer of rights of occupancy in the Secured Property; (b) the creation of a purchase money security interest for household appliances; (c) the transfer of title by devise, descent or by operation of law upon the death of a joint tenant; (d) the grant of a leasehold for three years or less which does not contain an option to purchase; (e) a transfer to a relative resulting from the death of a Borrower; (f) a transfer where the spouse or children of Borrower become an owner of the Secured Property; (g) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of Borrower becomes an owner of the Secured Property or (h) a transfer into an inter vivos trust in which Borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the Secured Property.

If Lender exercises this right to accelerate, Lender will mail Borrower notice of acceleration at Borrower's address according to Lender's records. Such notice will provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such items before the expiration of such period, Lender may without further notice or demand on Borrower, use any remedies permitted by paragraph 13."

10. ACCELERATION OF INDEBTEDNESS. If Borrower defaults in the prompt payment, when due, of the Indebtedness secured hereby, or any part thereof, or fails to keep and perform any of the covenants or agreements contained herein or in any other document securing payment of the Indebtedness secured hereby, or, if Borrower or any person liable for the Indebtedness, or any part thereof, files a voluntary petition in bankruptcy or for corporate reorganization, makes an assignment for the benefit of any creditor, or is adjudicated a bankrupt or insolvent, or if the Secured Property or any property owned by a person liable for the Indebtedness is placed under control or in the custody of any court of receiver, or if Borrower abandons any of the Secured Property, then, in any such event, Lender may after giving Borrower 15 days written notice of Lender's intent to do so, (and if Borrower fails to cure such default within such 15-day period) but without any other demand, notice or presentment, or notice of intention to accelerate, declare the entire unpaid Indebtedness immediately due and payable.

11. SURVIVAL; RELEASE. All of the covenants and agreements of Borrower set forth herein shall survive the execution and delivery of this document and shall continue in force until the Indebtedness is paid in full. Accordingly, if Borrower performs faithfully each and all of the covenants and agreements herein contained, then, and then only, this conveyance shall become null and void and shall be released in due form, upon Borrower's written request and at Borrower's expense. Otherwise it shall remain in full force and effect. No release of this conveyance or the lien thereof shall be valid unless executed by Lender.

12. SUBSTITUTION OF TRUSTEE. If the Trustee named herein dies or becomes disqualified from acting in the execution of this Trust, or fails or refuses to execute the same when requested by Lender so to do, or if, for any reason, Lender prefers to appoint a substitute trustee to act instead of the Trustee named herein, Lender shall have full power to appoint, at any time by written instrument, a substitute trustee, and, if necessary, several substitute trustees in succession, who shall succeed to all the estate, rights, powers and duties of Trustee named herein, and no notice of such appointment need be given to Borrower or to any other person or filed for record in any public office. Such appointment may be executed by any authorized agent of Lender; and if Lender be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Borrower ratifies and confirms any and all acts that Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof. Borrower hereby agrees, on behalf of Borrowers and of Borrower respective heirs, legal representatives, successors and assigns, that the recitals contained in any deed or deeds or other instrument executed in due form by any Trustee or substitute trustee, acting under the provisions of this Deed of Trust, shall be prima facie evidence of the facts recited, and that it shall not be necessary to prove in any court, otherwise than by such recitals, the existence of the facts essential to

authorize the execution and delivery of such deed or deeds or other instrument and the passing of title thereby, and all prerequisites and requirements of any sale or sales shall be conclusively presumed to have been performed, and all persons subsequently dealing with the Secured Property purported to be conveyed by such deed or deeds or other instrument, including without limitation, the purchaser or purchasers thereof, shall be fully protected in relying upon the truthfulness of such recitals.

13. **FORECLOSURE.** Borrower hereby authorizes and empowers Trustee, at the request of Lender, at any time when Borrower shall be in default in the performance of any provision under this Deed of Trust, to sell the Secured Property at public sale to the highest bidder, for cash, at the door of the County Courthouse of the county in Texas in which the Secured Property or any part thereof is situated, as herein described, between the hours of 10:00 a.m. and 4:00 p.m. of the first Tuesday of any month, after advertising the time, place and terms of said sale, and the Secured Property to be sold, by posting (or by having some person or persons acting for him post), for at least twenty-one (21) days preceding the date of the sale, written or printed notice of the proposed sale at the Courthouse door of said county in which the sale is to be made, and by filing a copy of said notice with the county or counties in which the Secured Property is located, and if such property is in more than one county, one such notice of sale shall be posted at the Courthouse door of each county in which part of such property is situated and such property may be sold at the courthouse door of any one of such counties, and the notice so posted shall designate in which county such property shall be sold; in addition to such posting and filing of notice, the holder of the Indebtedness hereby secured shall at least twenty-one (21) days preceding the date of sale serve written or printed notice of the proposed sale by certified mail on Borrower and on each other debtor, if any, obligated to pay the Indebtedness hereby secured according to records of such holder. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to Borrower and such other debtors at their most recent address or addresses as shown by the records of the holder of the Indebtedness hereby secured, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. Borrower hereby designates as their address for the purposes of such notice, the address set out below opposite their signatures, and agree that such address shall be changed only by depositing notice of such change, enclosed in a postpaid wrapper, in a post office on official certified mail postage prepaid, return receipt requested, addressed to Lender at the address for Lender set out herein (or to such other address as Lender may have designated by notice given as above provided to Borrowers and such other debtors), any such notice of change of address of Borrower or other debtors, any such notice of change of address of Borrower or other debtors shall be effective upon receipt by Lender. Any change of address of Lender shall be effective three (3) business days after deposit thereof in the above described manner in the care and custody of the United States Postal Service. Borrower hereby authorizes and empowers Trustee, and each and all of his successors in this trust, to sell the Secured Property, or any interest or estate in the Secured Property (including without limitation the fee interest or the Groundlease) together or in lots or parcels, as such Trustee shall deem expedient, and to execute and deliver to the purchaser or purchasers of the Secured Property good and sufficient deed or deeds of conveyance thereof and bills of sale with covenants of general warranty binding on Borrower and Borrowers respective heirs, legal representatives, successors and assigns. The Trustee making such sale shall receive the proceeds thereof and shall apply the same as follows: (i) he shall pay the reasonable expense of executing this trust, including a reasonable commission to himself; (ii) after paying such expenses, he shall pay so far as may be possible the Indebtedness hereby secured, discharging first that portion of said indebtedness arising under the covenants or agreements herein contained and not evidenced by the Note; (iii) he shall pay the residue, if any, to Borrower, its respective heirs, legal representatives, successors or assigns. Payment of the purchase price to Trustee shall satisfy the obligation of the purchaser at such sale therefor, and he shall not be bound to look after the application thereof.

13.1 If default be made in the payment of any installment of the Note or other Indebtedness secured by this Deed of Trust, or in the observance or performance of any provision in this Deed of Trust, the holder of the Indebtedness or any part thereof under which such default occurs shall after giving

Borrower 15 days notice of such default (and Borrower not having cured such default within such 15-day period) have the option to proceed with foreclosure in satisfaction of such item either through the courts or by directing Trustee or his successors in trust to proceed as if under a full foreclosure, conducting the sale as herein provided, and without declaring the whole indebtedness due, and provided that if sale is made because of default of an installment or a part of an installment, such sale may be made subject to the unmatured part of the Note or other Indebtedness secured by this Deed of Trust; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured portion of the Indebtedness, but as to such unmatured portion of the Indebtedness, this Deed of Trust shall remain in full force and effect just as though no sale had been made under the provisions of this paragraph. It is further agreed that several sales may be made hereunder without exhausting the right of sale for any unmatured portion of said indebtedness, it being the intention of the parties hereto to provide for a foreclosure and sale of the security for any matured portion of the Indebtedness without exhausting the power to foreclose and to sell the security for any other portion of the Indebtedness whether matured at the time or subsequently maturing. It is agreed that an assignee holding any installment or part of any installment of the Note or other Indebtedness secured hereby shall have the same powers as hereby conferred on the holder of the Indebtedness to proceed with foreclosure on a matured installment or installments, and also to request Trustee or successors in trust to sell the Secured Property or any part thereof; but if an assignee forecloses or causes a sale to be made to satisfy any installment, part of an installment, or installments, then such foreclosure or sale shall be made subject to all of the terms and provisions hereof with respect to the unmatured part of the Note and other Indebtedness secured hereby owned by the then holder of such Indebtedness.

13.2 The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted, or rental or lease contract made, in violation of any provision of this Deed of Trust, and may take immediate possession of the Secured Property free from, and despite the terms of, such grant of easement and rental or lease contract.

13.3 Lender may bid and being the highest bidder therefor, become the purchaser of any or all of the Secured Property at any trustee's or foreclosure sale hereunder and shall have the right to credit the amount of the bid upon the amount of the Indebtedness owing to Lender, in lieu of cash payment.

13.4 If there is a Trustee's sale hereunder, and, if at the time of such sale, Borrower, or its heirs, legal representatives, successors or assigns, is occupying the Secured Property so sold, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of said property, such rental to be due daily to the purchaser. An action of forcible detainer and/or any other legal proceedings shall lie if the tenant holds over after a demand in writing for possession of said property; and this agreement and the Trustee's deed shall constitute a lease and agreement under which the tenant's possession, each and all, arose and continued.

14. RENTS; ISSUES; PROFITS. Borrower absolutely and irrevocably assigns to Lender all of Borrower's rights, title and interest in and to all sums ("Rents") that become due under any and each oil, gas, mineral or other lease, rental contract or easement contract ("The Leases") pertaining to all or any part of the Secured Property, and when received to apply the same on the Indebtedness. No demand for, and no receipt or application of, any such sum shall be deemed to minimize, subordinate or affect in any way the lien, security interest or rights hereunder of Lender, or any rights of a purchaser of the Secured Property at a trustee's or foreclosure sale hereunder, as against the person from whom such sum was demanded or received, or his legal representatives, successors or assigns, or anyone claiming under such Lease.

14.1 Until such demand is made, Borrower is authorized to collect, or continue collecting, the Rents, but such privilege to collect or continue collecting, as aforesaid by the lender shall not operate to permit the collection by borrower, its successors or assigns, (and Borrower covenants that Borrower will not collect, demand or receive) any installment of rent in advance of the date prescribed in the Leases for the payment thereof.

14.2 The authority and power of Lender to collect the Rents, as set forth herein, may be exercised and the Rents collected with or without the taking of possession of the secured Property, or any part thereof, and without the necessity of (but nothing herein contained shall be construed to prohibit) Lender instituting foreclosure under its Deed of Trust, and an action upon its Note or any action upon this Assignment directly against the tenants under said Leases.

14.3 In furtherance of this Assignment, Borrower authorizes Lender, through its employees, agents, or representatives, at the option of Lender, upon the occurrence of any default, to enter upon the secured Property and to collect, in the name of Borrower or in its own name as Lender, the Rents accrued but unpaid and in arrears at the date of such default, as well as the Rents thereafter accruing and becoming payable during the period this Assignment is operative; and to this end, Borrower further agrees to cooperate and assist the Lender, its employees, agents or representatives in all reasonable ways with collection of the Rents.

14.4 Borrower authorizes (but nothing herein shall all be deemed to require or obligate) the Lender upon such entry, to take over and assume the management, operation and maintenance of the secured property and to perform all acts necessary and proper in its sole discretion and to expend such sums as may be necessary in connection therewith, including the authority to effect new leases, to cancel or surrender existing leases, to alter or amend the terms of existing leases, to renew existing leases, or to make concessions to tenants, Borrower hereby releasing all claims against Lender arising out of such management, operation and maintenance, excepting the liability of the Lender to account as hereinafter set forth.

14.5 This Assignment is given as additional security for the performance of each and all of the obligations and covenants of the Note, this Deed of Trust together with any renewal, extension or modification thereof.

14.6 Lender shall, after payment of all proper charges and expenses, including reasonable compensation to such agents, employees or representatives as shall be selected or employed, and after the accumulation of a reasonable reserve to meet taxes, assessments, utility rents, and fire and ability insurance in requisite amounts, credit the net amount of income received by it by virtue of this Assignment to any amounts due and owing of it by Borrower under the terms of the Note and the Deed of Trust, but the manner of the application of such net income and what items shall be credited, shall be determined in the sole discretion of Lender.

14.7 Borrower warrants that at the time of the execution and delivery of this Deed of Trust, there has been no anticipation or prepayment of any Rents by any of the tenants occupying the Secured Property under the Leases.

14.8 Neither Borrower nor its successors or assigns, shall have the right, power or authority to (and Borrower covenants that it shall not) alter, modify or amend the terms or conditions of any of the Leases in any particular whatsoever except in the ordinary course of business, without first obtaining the consent in writing of Lender to such alteration, modification or amendment.

14.9 Nothing herein contained shall be construed as making Lender a mortgagee in possession, nor shall Lender be liable for laches, or failure to collect said Rents, and it is understood that Lender is to account only for such sums as are actually collected.

14.10 Borrower covenants that no tenant need determine whether or not a default has occurred making this Assignment operative, but shall pay over the Rents to Lender upon notice from it to do so and upon so doing shall be relieved from liability therefor, Borrower in all respects.

14.11 Borrower will keep, observe and perform all of the covenants on the part of the lessor to be kept, observed and performed under any of the Leases. If Borrower fails to keep, observe and perform any such covenant, Lender shall have the right, at its option, to keep observe and perform such covenant on behalf of Borrower or to declare, with or without notice, all sums secured by this Deed of Trust to be immediately due and payable and avail itself of any and all remedies provided for in the Note or the Deed of Trust in the event of default. If Lender exercises its option to keep, observe or perform any of

lessor's obligations under any of the Leases, it shall be entitled to recover from Borrower immediately upon demand any expenses incurred or amounts advanced in performing such covenants, together with interest at the highest lawful rate per annum now permitted by written contract under applicable law from the date of such advance. Should Borrower fail to repay Lender any such expenses or advances as herein provided, Lender may at its option, with or without notice, declare all sums secured by this Deed of Trust to be immediately due and payable and avail itself of any and all remedies provided for herein in the event of default.

14.12 Neither the existence of this Assignment, nor the exercise of its privilege to collect Rents, shall be construed as a waiver by Lender, or its successors and assigns, of the right to enforce payment of the Note in strict accordance with its terms and provisions and those of this Deed of Trust.

15. PARTIAL RELEASE. Any part of the Secured Property may be released by Lender without affecting the lien, security interest and rights hereof against the remainder. The lien, security interest and rights hereby granted shall not affect or be affected by any other security taken for the Indebtedness or any part thereof. The taking of additional security, or the extension or renewal of the Indebtedness or any part thereof, shall at no time release or impair the lien, security interest and rights granted hereby, or affect the liability of any endorser, guarantor or surety, or improve the right of any junior lienholder; and this Deed of Trust, as well as any instrument given to secure any renewal or extension of the Indebtedness, or any part thereof, shall be and remain a first and prior lien and security interest on all of the Secured Property not expressly released, until the Indebtedness is completely paid.

16. SEVERABILITY AND USURY. The invalidity, or unenforceability in particular circumstances, of any provision of this Deed of Trust shall not extend beyond such provision or such circumstances and no other provision of this instrument shall be affected thereby. It is the intention of the parties hereto to comply with applicable usury laws; accordingly, it is agreed that notwithstanding any provisions to the contrary in the Note or any instrument evidencing the Indebtedness, in this Deed of Trust or in any of the documents or instruments securing payment of the Indebtedness or otherwise relating thereto, in no event shall the Note or such documents require the payment or permit the collection of interest in excess of the maximum amount permitted by such laws. If any such excess of interest is contracted for, charged or received, under the Note or any instrument evidencing the Indebtedness, under this Deed of Trust or under the terms of any of the other documents securing payment of the Indebtedness or otherwise relating thereto, or in the event the maturity of any of the Indebtedness is accelerated in whole or in part, or in the event that all or part of the principal or interest of the Indebtedness shall be prepaid, so that under any of such circumstances, the amount of interest contracted for, charged or received, under the Note or any instruments evidencing the Indebtedness, under this Deed of Trust or under any of the instruments securing payment of the Indebtedness or otherwise relating thereto, on the amount of principal actually outstanding from time to time under the Note and other instruments evidencing the Indebtedness, shall exceed the maximum amount of interest permitted by applicable usury laws, then in any such event (a) the provisions of this paragraph shall govern and control, (b) neither Borrower nor any other person or entity now or hereafter liable for the payment of the Note or any instrument evidencing the Indebtedness shall be obligated to pay the amount of interest permitted by applicable usury laws, (c) any such excess that may have been collected shall be either applied as a credit against the then unpaid principal amount hereof or refunded to Borrower, at the holder's option, and (d) the effective rate of interest shall be automatically reduced to the maximum lawful contract rate allowed under applicable usury laws as now or hereafter construed by the courts having jurisdiction thereof. It is further agreed that without limitation of the foregoing, all calculations of the rate of interest contracted for, charged or received under the Note, or any instrument evidencing the Indebtedness, under this Deed of Trust or under such other documents that are made for the purpose of determining whether such rate exceeds the maximum lawful contract rate, shall be made, to the extent permitted by applicable laws by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of the loan evidenced by the Note or the instruments evidencing the Indebtedness, all interest at any time contracted for, charged or received from Borrower or otherwise by the holder or holders hereof in connection with such loan.

17. WAIVER. Borrower, or Borrower's heirs, legal representatives, successors or assigns, shall not have or assert, and does hereby waive, any right, under any statute or rule of law pertaining to the marshaling of assets, a sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatever, to defeat, reduce or affect the lien, security interest and rights of Lender, under the terms of this Deed of Trust, to a sale of the Secured Property for the collection of the Indebtedness (without any prior or different resort for collection), or the right of Lender, under the terms of this Deed of Trust, to the payment of the Indebtedness out of the proceeds of sale of the Secured Property in preference to every other person and claimant whatever (only reasonable expenses as aforesaid being first deducted).

18. NO WAIVER. It is expressly agreed that (i) no waiver of any default on the part of Borrower or breach of any of the provisions of this Deed of Trust shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time; (ii) any failure by Lender to insist upon the strict performance by Borrower of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and Lender, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Borrower of any and all of the terms and provisions of this Deed of Trust; (iii) neither Borrower nor any other person now or hereafter obligated for the payment of the whole or any part of the Indebtedness shall be relieved of such obligation by reason of the failure of Lender or Trustee to comply with any request of Borrower, or of any other person so obligated, to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust or of any obligations secured by this Deed of Trust, or by reason of the release regardless of consideration, of the whole or any part of the security held for said indebtedness, or by reason of the subordination in whole or in part by Lender of the lien, security interest or rights evidenced hereby, or by reason of any agreement or stipulation with any subsequent owner or owners of the Secured Property extending the time of payment or modifying the terms of said indebtedness or this Deed of Trust without first having obtained the consent of Borrowers or such other person, and, in the latter event. Borrower and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by Lender; (iv) regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien or security interest on the Secured Property, Lender may release the obligation of anyone at any time liable for any of the indebtedness or any part of the security held for the indebtedness and may extend the time of payment or otherwise modify the terms of said indebtedness and/or this Deed of Trust without, as to the security for the remainder thereof, in anywise impairing or affecting the lien or security interest of this Deed of Trust or the priority of such lien or security interest, as security for the payment of the Indebtedness as it may be so extended or modified, over any subordinate lien or security interest; (v) the holder of any subordinate lien or security interest shall have no right to terminate any lease affecting the Secured Property whether or not such lease be subordinate to this Deed of Trust; and (vi) Lender may resort for the payment of the Indebtedness to any security therefor held by Lender in such order and manner as Lender may elect.

19. UNSECURED INDEBTEDNESS. If any portion of the Indebtedness is not, for any reason whatsoever, secured by this Deed of Trust on the Secured Property, the full amount of all payments made on the Indebtedness shall first be applied to such unsecured portion of the Indebtedness until the same has been fully paid.

20. SUBROGATION. To the extent that proceeds of the Note are used to pay any prior Indebtedness secured by an outstanding lien, security interest, charge or prior encumbrance against the Secured Property, such proceeds have been advanced by Lender at Borrower's request; and Lender shall be subrogated to any and all rights, powers, equities, liens and security interests owned or granted by any owner or holder of such prior Indebtedness, irrespective of whether said security interests, liens, charges or encumbrances are released of record.

21. ADDITIONAL SECURITY. To further secure the Indebtedness, Borrowers hereby grant a security interest to lender in and to all personal property hereinabove described (all of such personal property and the proceeds is collectively referred to as the "Collateral", but the mention of proceeds of Collateral shall not be construed as an authorization for the sale or surrender by Borrowers of Collateral. The term "Collateral" shall be included in the term "Secured Property"). This document shall constitute a security agreement as well as a mortgage and deed of trust. The following applies with respect to Collateral:

21.1 In addition to and cumulative of any other remedies granted in this Deed of Trust to Lender, Lender may, upon default hereunder, proceed under Chapter 9 of the Texas Business and Commerce Code as now adopted and existing and as it may hereafter be amended or succeeded ("Uniform Commercial Code") as to all or any part of the Collateral and shall have and may exercise with respect to all or any part of the Collateral all of the rights, remedies and powers of a secured party under the Uniform Commercial Code, including, without limitation, the right and power to repossess, retain and to sell, at public or private sale or sales, or otherwise dispose of, lease or utilize the Collateral or any part thereof and to dispose of the proceeds in any manner authorized or permitted under the applicable provisions of the Uniform Commercial Code, and to apply the proceeds thereof toward payment of Lender's reasonable attorneys' fees and other expenses and costs of pursuing, searching for, receiving, taking, keeping, storing, advertising, and selling the Collateral thereby incurred by Lender, and toward payment of the Indebtedness in such order and manner as lender may elect consistent with the provisions of the Uniform Commercial Code. Nothing in this paragraph (21) shall be construed to impair or limit any other right or power to which Lender may be entitled at law or in equity.

21.2 Among the rights of Lender upon default and acceleration of the Indebtedness pursuant to the provisions hereof, and without limitation, Lender shall have the right (but not the obligation), without being deemed guilty of trespass and without liability for damages thereby occasioned, (i) to enter upon any premises where said Collateral may be situated and take possession of the Collateral, or render it unusable, or dispose of the Collateral on Borrower's premises, and Borrower agrees not to resist or to interfere, and (ii) to take any action deemed necessary or appropriate or desirable by Lender at Lender's option and in its discretion, to repair, refurbish or otherwise prepare the Collateral for sale, lease or other use or disposition as herein authorized. Lender may at Lender's discretion require Borrower to assemble the Collateral and make it available to Lender at a place designated by Lender that is reasonably convenient to both parties.

21.3 Lender shall give Borrower notice, by certified mail, postage prepaid, of the time and place of any public sale of any of the collateral or of the time after which any private sale or other intended disposition thereof is to be made by sending notice to Borrower at the addresses of Borrower set out below opposite their signatures at least five (5) days before the time of the sale or other disposition, which provisions for notice Borrower and Lender agree are reasonable; provided, however, that nothing herein shall preclude Lender from proceeding as to both real and personal property in accordance with Lender's rights and remedies in respect to real property as provided in the Uniform Commercial Code, and without any notice to Borrower except for the notices provided for in paragraph (13) hereof.

21.4 To the extent such may now or hereafter be permitted under Texas law, Lender is authorized to execute and file financing statements and continuation statements under the Uniform Commercial Code with respect to the Collateral without joinder of Borrower in such execution or filing. Borrower shall execute and deliver to Lender such financing statements, continuation statements and other documents relating to the collateral as Lender may reasonably request from time to time to preserve and maintain the priority of the security interest created by this Deed of Trust and shall pay to Lender on demand any expenses and attorneys' fees incurred by Lender in connection with the preparation, execution, and filing of this Deed of Trust and of any financing statements or other documents necessary or desirable to continue or confirm Lender's security interest, or any modification thereof. This document, and any carbon, photographic or other reproduction of this document may be filed by Lender and shall be sufficient as a financing statement. All or part of the Collateral is or is to become fixtures on the real estate constituting a portion of the Secured Property, but this statement shall not impair or limit the effectiveness of this

document as a security agreement or financing statement for other purposes, and this Deed of Trust shall constitute a fixture financing statement and, as such, shall be filed for record in the real estate records of the county in which the land covered hereby is located. Borrower shall not change Borrower's name without the prior express written consent of Lender. The name of the record owner of the land covered hereby is the party or parties defined herein as Borrower.

21.5 Unless otherwise disclosed to Lender as herein provided, and except for the security interest granted by this Deed of Trust, Borrower is the owners of the Collateral free of any adverse claim, security interest or encumbrance. Borrower shall defend the Collateral against all claims and demands of any person at any time claiming the same or any interest therein. Borrower has not heretofore signed any financing statement and no financing statement signed by Borrower is now on file in any public office except those statements, true and correct copies of which have been delivered to Lender. So long as any amount remains unpaid on the Indebtedness, Borrower shall not execute and there shall not be filed in any public office any such financing statement or statements affecting the Collateral other than financing statement or statements affecting the Collateral other than financing statements in favor of Lender hereunder.

21.6 The security interest granted herein shall not be construed or deemed to constitute Lender or Trustee as a trustee or mortgagee in possession of the Secured Property so as to obligate Lender or Trustee to lease the Secured Property or attempt to do the same, or to take any action, incur any expenses or perform or discharge any obligation, duty or liability with respect to the Secured Property or any part thereof or otherwise.

21.7 Borrowers' address is a herebelow set forth and Lender's address is as hereinabove set forth.

22. REMEDIES OTHER THAN FORECLOSURE. In the event of default by Borrower in the performance of one or more of their covenants and agreement as set forth herein, Lender may, at its option, enter upon and take exclusive possession of the Secured Property and thereafter manage, use, lease and otherwise operate same in such manner and by and through such persons, objects or employees as it may deem proper and necessary. Lender shall be likewise entitled to possession of all books and records of Borrower that relate to the Secured Property. The rights of Lender under this paragraph may be enforced through an action for forcible entry and detainer or any other means authorized by law.

23. DISCONTINUING REMEDIES. If Lender elects to invoke any of the rights or remedies provided for in this Deed of Trust, but thereafter determines to withdraw or discontinue same for any reason, it shall have the unqualified right to do so, whereupon all parties shall be automatically restored and returned to their respective positions regarding the Indebtedness and this document as shall have existed prior to the invocation of Lender's rights under this Deed of Trust and the rights, powers and remedies of Lender under this Deed of Trust shall be and remain in full force and effect.

24. APPRAISEMENT AND REDEMPTION LAWS. Borrower waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisement before sale of any portion of the Secured Property commonly known as Appraisement Laws and (ii) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of the Note or creating or extending a period or redemption from any sale made in collecting the Note commonly known as Stay Laws and Redemption Laws.

25. COOPERATION OF BORROWER. Borrower agrees that it shall execute and deliver such other and further documents and do and perform such other acts as may be reasonably necessary and proper to carry out the intention of the parties as expressed in this Deed of Trust and to effect the purposes of this document and the loan transaction referred to in this Deed of Trust. Without limitation of the foregoing, Borrowers agree to execute and deliver such documents as may be necessary to cause the liens and security interests granted by this Deed of Trust to cover and apply to any property placed in, on or about the Secured Property in addition to, or replacement or substitute for any of the Secured Property.

26. SUCCESSORS AND ASSIGNS. The covenants herein contained shall inure to the benefit of Lender and Trustee, their heirs, legal representatives, successors and assigns, and shall be binding upon the respective heirs, legal representatives, successors and assigns of Borrower, but nothing in this paragraph shall constitute an authorization for Borrower to sell or in any way dispose of the Secured Property or any part thereof if otherwise prohibited by any of the terms hereof.

27. CONSTRUCTION. Wherever used in this document, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the words "Deed of Trust" shall mean this Deed of Trust and Security Agreement and any supplement or supplements hereto, the word "Borrowers" shall mean "Borrower, its heirs, legal representatives, successors and assigns, and/or any subsequent owner or owners of the Secured Property", the word "Lender" means "Lender" or any subsequent lawful holder or holders of the Note or other indebtedness secured hereby", the word "Note" shall mean any note secured by this Deed of Trust and any renewals, extensions and rearrangements thereof the word "person" shall mean "an individual, corporation, trust, partnership or unincorporated association", and the pronouns of any gender shall include the other genders, and either the singular or plural shall include the other.

28. ATTORNEYS' FEES AND COSTS. If Lender or Trustee (i) commences a judicial action or nonjudicial proceeding or takes any other action, with or without instituting litigation, to enforce any of the provisions of this Deed of Trust or (ii) engages an attorney to appear in any judicial action or nonjudicial proceeding commenced by any person concerning this Deed of Trust including but not limited to actions or proceedings (a) under the Bankruptcy Laws of the United States or any state, (b) for condemnation, (c) under the California Probate code, (d) in connection with any state or federal tax lien or (e) involving mechanic's or materialman's liens or stop notices, then in any of such events, Borrower shall pay reasonable attorneys' fees for the services performed by any attorney (including Lender's in-house attorneys) retained by Lender or Trustee pursuant to this paragraph and all costs and expenses incurred incidental to any such proceeding.

29. LOAN AGREEMENT. This Deed of Trust and the Note are subject to the provisions of that certain Loan Agreement dated, for reference purposes only, as of July 15, 1985, entered into between Borrower and Lender for the loan secured hereby.

30. CONTROLLING LAW. This Deed of Trust has been executed in the County of San Diego, State of California and shall be controlled by and interpreted according to the applicable laws of the State of California, except to the extent that applicable federal laws and regulations are in conflict, in which case, such applicable federal laws and regulations shall control; however with respect to Lender's rights and remedies as to the Secured Property, the applicable laws of the State of Texas shall control.

IN TESTIMONY WHEREOF, Borrowers have executed this Deed of Trust on August 2, 1985, at San Diego, California.

Address of Borrower:

Borrower:

GREEN TREE, LTD.,
a California Limited Partnership

By: Patrick A. Judd
Patrick A. Judd,
General Partner

Gregory R. Cox
Gregory R. Cox

STATE OF California §
COUNTY OF San Diego §

On August 2, 1985, before me, the under-
signed, a Notary Public in and for said State, personally appeared Patrick A.
Judd, ~~personally known to me~~ (or proved to me on the basis of satisfactory
evidence) to be the person who executed the within instrument on behalf of the
partnership and acknowledged to me that the partnership executed the same.

WITNESS my hand and official seal.

Signature Fong Leong

(This area for official
notarial seal)



NOTARY S

STATE OF California §
COUNTY OF San Diego §

On August 2, 1985, before me, the under-
signed, a Notary Public in and for said State, personally appeared Gregory R.
Cox, ~~personally known to me~~ or proved to me on the basis of satisfactory
evidence to be the person whose name is subscribed to the within instrument and
acknowledged that he executed the same.

WITNESS my hand and official seal.

Signature Fong Leong

(This area for official
notarial seal)



NOTARY S

FEE:

Lots 1 and 2 of LAURA ADDITION, an Addition in Travis County, Texas, according to the map or plat thereof recorded in Volume 64, Page 39, Plat Records of Travis County, Texas.

LEASEHOLD:

That certain Groundlease dated July 28, 1983 between Gregory R. Cox as Lessor and Green Tree, Ltd., a California Limited Partnership as Lessee, recorded in Volume 8184, Page 627, Deed Records of Travis County, Texas.

FILED

1985 AUG 20 PM 2:15

Louis R. Angeline
COUNTY CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me; and was duly RECORDED, in the Volume and Page of the named RECORDS of Travis County, Texas, on

AUG 20 1985



Louis R. Angeline
COUNTY CLERK
TRAVIS COUNTY, TEXAS

GF # 10800

SOUTHWEST TITLE CO.

Return To:

Home Federal Savings & Loan

635 Broadway

San Diego, CA 92101

Attn: Fong Leong
LCUG 1020:7/24/85

EXHIBIT 1

09315 0663

Chula Vista Mayor Failed to Disclose Loans From S&L

By CHRIS KRAUL
and GLENN F. BUNTING,
Times Staff Writers

Chula Vista Mayor Greg Cox received a \$2.2-million real estate loan from Home Federal Savings & Loan Assn. in August, 1985, and later cast votes for two multimillion-dollar development projects by the San Diego lender without disclosing the loan.

Cox, who needed the \$2.2 million to avoid default on a 123-unit apartment complex he and 10 other investors owned in Austin, Tex., did not list the loan on his annual financial disclosure forms for the past two years. On April 2, Cox amended his economic statements to include the loan after learning that The Times had inquired about the transaction.

The mayor was obligated to disclose the loan under state Political Reform Act laws that require public officials to report loans exceeding \$10,000 from banks that conduct business in local jurisdictions, said Jeanette Turvill, a spokeswoman for the state Fair Political Practices Commission.

The political reform laws also prohibit a public official from making decisions that benefit sources of income, in some cases including loans. However, the law exempts commercial loans as a source of income if similar loan terms are available generally.

"If I'm guilty of anything, it's perhaps that the loan should have been listed," said Cox, who added that it never occurred to him that the loan posed any conflict of interest.

In an interview last week in his Chula Vista office, Cox said that he did not receive any special treatment from Home Federal and the financing "absolutely did not influence my votes in any way" on the two development projects.

A Home Federal spokeswoman, Monica Wiley, said that 15% of Home Federal's real estate loans are made on properties outside the state, and that the institution's loan to Cox followed "conservative underwriting standards."

Cox, 38, who was elected mayor in 1981, said he is in "serious" financial straits. Home Federal had scheduled an April 7 foreclosure auction to sell the Austin apartments after Cox's investor group defaulted on the loan late last year. The auction was postponed at the last minute when an unnamed buyer expressed interest in the property, Cox said.

Cox said he stands to lose as much as \$117,000 if the Austin property is foreclosed on. A new



Los Angeles Times

"If I'm guilty of anything it's perhaps that the loan should have been listed."

Greg Cox
Mayor of Chula Vista

foreclosure auction is scheduled for May 7 in Austin, Tex.

The net worth that Cox accumulated over the past few years as a result of real estate investment has been rather severely depleted, Cox said.

After learning that The Times was looking into his financial troubles, Cox said, he asked Chula Vista City Attorney Thomas Harron whether he had violated any disclosure or conflict-of-interest laws. Harron referred Cox to the FPPC in Sacramento, which told Cox to submit details in writing.

Turvill said the FPPC will advise Cox on his disclosure obligations. She said that the Home Federal loan, but will not tell him immediately whether he acted properly in not disclosing the loan.

Turvill said violation of disclosure or conflict-of-interest provisions of the state Political Reform Act can result in both civil and criminal sanctions. The FPPC can assess administrative fines of \$2,000 per violation and seek civil penalties, as well as the loan amount. The district attorney can also file charges and conviction for knowingly violating the law could lead to 18 months in jail.

Home Federal's real estate subsidiary, Home Capital Development Corp., is participating with builder

Please see MAYOR, Page 11

economic interest statement because he basically copied the information from his 1984 form.

"I reviewed the 1984 one and I didn't notice any changes as I looked through it and did not reflect on the fact that the Texas property had been refinanced," Cox

Cox said Home Federal was the only banking institution that would lend him the \$2.2 million on reasonable terms. Cox said he was no longer actively managing the apartments, but Home Federal re-

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OFFICE OF THE CITY ATTORNEY

CONFIDENTIAL

DATE: April 21, 1987
TO: Gregory R. Cox, Mayor
FROM: Thomas J. Harron, City Attorney *TJH*
SUBJECT: Political Reform Act - Conflict of Interest

On tonight's agenda there is an item involving Bonita Long Canyon Partnership. Specifically, item number 12 involves a resolution approving an agreement between the City and Bonita Long Canyon to not protest the formation of an undergrounding district. You have requested advice as to whether a loan you co-signed involving a property in Texas would require you to abstain from participating in any decision affecting Bonita Long Canyon. After researching this issue and discussing it with John McLean, a staff attorney for the Fair Political Practices Commission, it is my opinion that you do not have a conflict of interest in this matter and may participate.

DISCUSSION

You have co-signed on a loan from Home Federal Savings and Trust to a joint venture which owns some apartments in Texas. Home Capital is a wholly owned subsidiary of Home Federal. Home Capital is a partner with McMillin in the Bonita Long Canyon Partnership and El Rancho del Rey. On tonight's agenda is an item involving a proposed agreement between the City and the Bonita Long Canyon Partnership.

The Political Reform Act and specifically Government Code §87100 states that no public official shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. Government Code §87103 defines a financial interest. It states:

"An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect distinguishable from its effect on the public generally on the official or a member of his or her immediate family or on:

Mayor Gregory R. Cox
April 21, 1987
Page 2

a....

b....

- c. Any source of income...other than loans by
a commercial lending institution in the
regular course of business on terms
available to the public without regard to
official status.

Home Federal is a commercial lending institution and the loan to the joint venture in Texas was on terms generally available to the public. For this reason, your relationship with Home Federal/Home Capital fits squarely into §87103(c) and you therefore have no financial interest in this decision. Chula Vista Municipal Code Section 2.04.550(B) encourages councilmembers to vote unless disqualified for cause accepted by a vote of the Council or by the opinion of the City Attorney. Without this approval, a councilmember who abstains, in effect, consents that a majority of the quorum acts for him.

Based upon Government Code §87103 and my discussion with FPPC staff, it is my opinion that you have no conflict of interest in voting on matters that affect the Bonita Long Canyon Partnership and there is no legal requirement that you abstain.

TJH:clb
cc: City Council
City Manager

2802a



OFFICE OF THE CITY CLERK

April 20, 1987

TO: Mayor Greg Cox

FR: Jennie Fulasz, City Clerk

RE: Disclosure of investment of Texas property

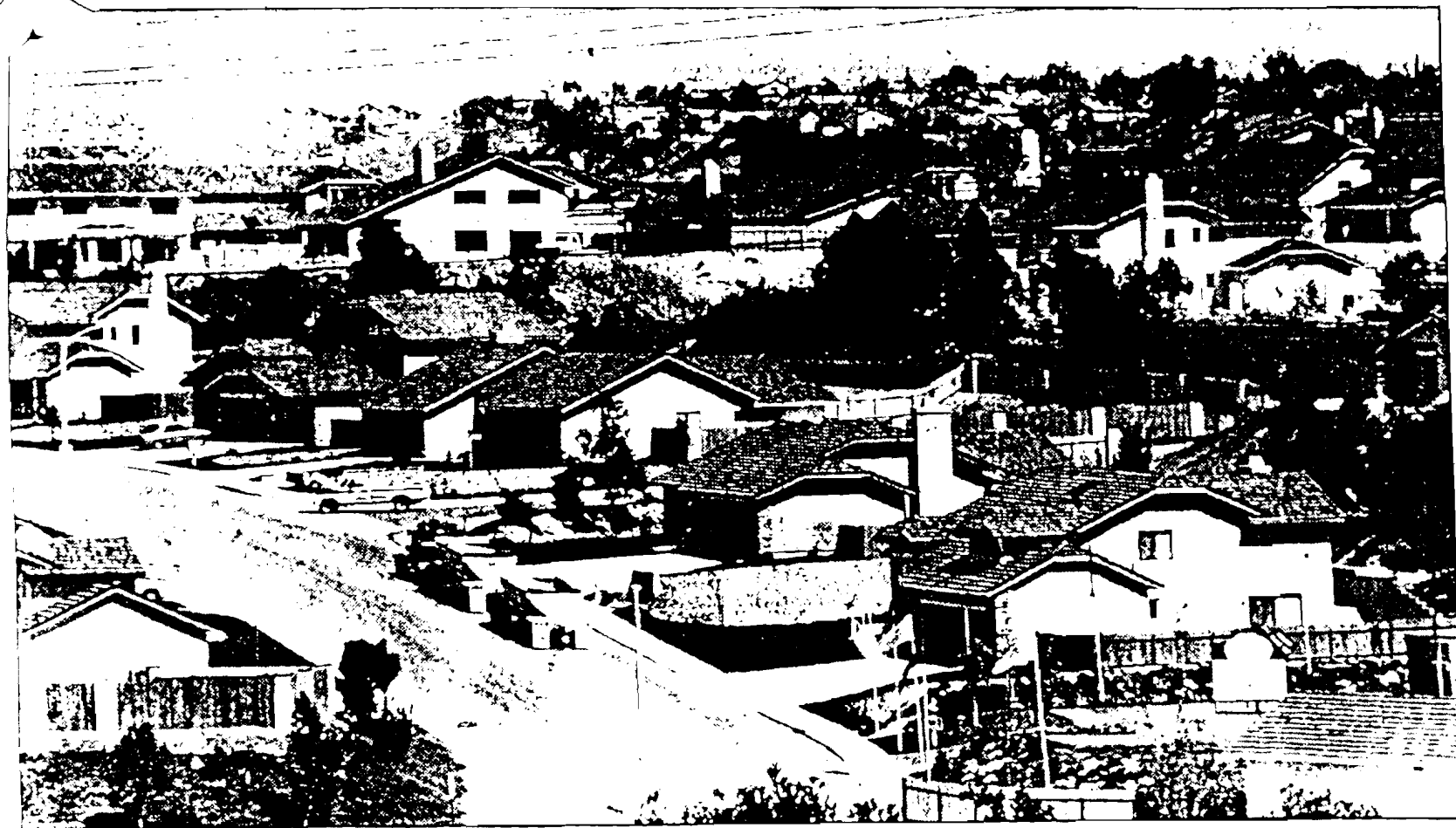
When you filed your annual Statement of Economic Interests for the year 1983 - filed on March 30, 1984, you disclosed investments which were clearly outside the jurisdiction of this City. One disclosure was your investment in property in Austin, Texas.

I informed you at that time that there was no need for you to disclose any of these interests. The law clearly defines an interest in real property in the jurisdiction if it is located in, or within, two miles of the jurisdiction. Real property is within the jurisdiction of a city if it is located in or within two miles of the jurisdiction or within two miles of any land owned or used by the City.

The law further states that a business entity or source of income is located in, or doing business in the jurisdiction if it or a parent, subsidiary, or a related business entity:

- 1. Manufactures, distributes or sells products or services on a regular basis in the jurisdiction.
- 2. Plans to do business in the jurisdiction.
- 3. Has done business in the jurisdiction within the previous two years.
- 4. Has an interest in real property in the jurisdiction.
- 5. Has an office in the jurisdiction.

Therefore, Greg, as you can see, there was no need for you to disclose any interests on your investment of the property in Austin, Texas at the time you filed this annual Statement.



JOHN PUNG Los Angeles Times

Bonita Long Canyon, one of two projects for which Chula Vista Mayor Greg Cox has cast affirmative votes. Cox received a

\$2.2-million loan from Home Federal Savings & Loan. A Home Federal subsidiary is a joint developer of Bonita Long Canyon.

MAYOR: Cox Failed to Tell of Loans From S&L

Continued from Page 1

Clorky McMullin in a joint venture to develop two major projects in Chula Vista: the 4,028-unit El Rancho Del Rey and the 862-unit Bonita Long Canyon, both located in the hills and canyons along H Street east of Interstate 805. Included in the El Rancho Del Rey project is a 100-

said. Nor did I specifically recall that Home Federal was the one that made the loan."

In an April 2 cover letter accompanying his amended financial statements to the clerk, Jennie Fulasz, Cox wrote: "Out of what may be an excess of caution, I have decided to disclose

because he still owned the land.

Cox said that he received no special treatment from Home Federal in applying for and getting the loan.

"The fact that the property went into default and was in foreclosure shows they handled it as a business

proposed the moratorium, said he felt the city needed to build schools and widen roads before allowing the construction of any more housing.

Cox argued against the moratorium and it was never considered for

develop two major projects in Chula Vista: the 4,028-unit El Rancho Del Rey and the 862-unit Bonita Long Canyon, both located in the hills and canyons along H Street east of Interstate 805. Included in the El Rancho Del Rey project is a 100-acre industrial business park.

On several occasions since he received the \$2.2-million loan, Cox cast votes in favor of the two projects.

In December, 1985, Cox voted with the council majority to increase the housing units in Bonita Long Canyon to 862 units from the previously approved 826. He joined the Chula Vista City Council last August in unanimously approving a final subdivision plan for the project.

Although the underlying zoning for the El Rancho Del Rey project was approved before Home Federal purchased the property in January, 1986, Cox has since participated in numerous council votes concerning minor development details in the project area such as utility easements and road construction.

Cox said it never occurred to him that his actions on the projects posed a potential conflict of interest for him. In fact, Cox recalls the votes as being procedural rather than substantive. He said he will consult with the city attorney before participating in future votes on Home Federal projects.

"[A conflict] not only never occurred to me, but it would never happen," Cox said. "Their handling of the loan was on a business basis and issues that I deal with before the City Council are strictly viewed on the basis of what's best for the City of Chula Vista."

Cox said he neglected to include the Home Federal loan on his 1985 economic interest statement because he basically copied the information from his 1984 form.

"I reviewed the 1984 one and I didn't notice any changes as I looked through it and did not reflect on the fact that the Texas property had been refinanced," Cox

said. Home Federal was the one that made the loan."

In an April 2 cover letter accompanying his amended financial statements to City Clerk Jennie Fulasz, Cox wrote, "Out of what may be an excess of caution, I have decided to file this supplemental disclosure."

Cox became involved in the Texas apartments in 1979 when he organized a group of 10 investors, including several family members, to purchase the Gazebos Apartments out of foreclosure. Two years later, after the Texas economy soured and tenant occupancy levels fell significantly at the Gazebos, Cox and his partners began looking for a buyer. The building had serious structural flaws, and the partners were unable to find a lender to finance renovations of the property, Cox said.

Cox sold the apartments in 1983 to an investor group organized by Patrick Judd, a friend of Cox's and a co-investor in other real estate deals. Cox retained ownership of the land.

By mid-1985, Cox and Judd needed a loan to help them save the failing property. They approached three local lenders—Home Federal, Great American First Savings Bank and Coast Savings & Loan.

At the time, both Home Federal and Great American were actively developing large residential projects in Chula Vista. In July, 1984, Home Capital Development Corp. paid \$9.7 million for Bonita Long Canyon. Home Capital then brought in builder Corky McMillin as a joint venture partner to construct the homes. Great American, also in partnership with McMillin, was in the process of developing Terra Nova, a 565-unit housing development in the same area.

Cox said Home Federal was the only banking institution that would lend him the \$2.2 million on reasonable terms. Cox said he was no longer actively managing the apartments, but Home Federal required him to co-sign the note

Cox said that he received no special treatment from Home Federal in applying for and getting the loan.

"The fact that the property went into default and was in foreclosure shows they handled it as a business transaction," Cox said. "In the event there is a need to foreclose, they will foreclose on me as they would anyone else."

Cox and Judd received the loan in August, 1985. In that same time period, Cox played a key role in negotiating a compromise that would bring an industrial business park and increased housing density to El Rancho Del Rey, which was purchased by Home Federal in January, 1986.

Community groups opposed the rezoning proposal and threatened to force a ballot initiative if the council approved the business park and increased housing density. Cox met with community leaders and the property owner, The Gersten Companies, to hammer out a compromise.

Cox suggested an alternative that provided industrial development only on the north side of H Street and 10% less residential density to the El Rancho Del Rey project, bringing the total number of dwellings to 4,028. According to Chula Vista Planning Director George Krempel, the council approved the plan in November, 1985.

In January, 1986, Home Capital bought the El Rancho Del Rey project for \$27 million.

Last December Cox objected to a proposed moratorium on building permits for homes east of Interstate 8 in Chula Vista, including the El Rancho Del Rey and Bonita Long Canyon projects. While Bonita Long Canyon is in the initial stages of development, El Rancho Del Rey faces significant hurdles this summer when developers will submit a subdivision map proposal. City officials say that it will be at least two years before homes are completed in El Rancho Del Rey.

Councilman David Malcolm, who

proposed the moratorium, said he felt the city needed to build schools and widen roads before allowing the construction of any more homes.

Cox argued against the moratorium and it was never considered for a formal council vote. Asked if there was a conflict in arguing against the proposed moratorium, Cox said, "To be honest, I don't know."

"The rationale I had in opposing the moratorium was that it dealt with traffic. The moratorium would have delayed widening of East H Street."

Malcolm, who has opposed Cox on a number of development issues in Chula Vista, said that he doubted that Cox deliberately concealed his involvement with one of the city's largest developers.

"Greg has been a great mayor for Chula Vista," Malcolm said. "I could say unequivocally that if there was a mistake, it was an honest mistake. I don't know what it is or what happened, but I think that basically Greg has been very honest and very forthright with everyone."

Cox, a former high school teacher, said he invested in 10 San Diego and Texas real estate projects over the past 15 years. Starting with a duplex in National City, Cox gradually built up enough equity to buy projects the size of the Gazebos.

The Austin apartment complex was not the only investment disaster for Cox.

In February, Cox lost between \$150,000 and \$200,000 when he and several partners lost a court battle to reverse the September, 1983 foreclosure of a 70-unit apartment complex in San Antonio.

In January, 1986, Cox took out a \$35,000 personal unsecured loan from Peoples Bank in Chula Vista to pay property taxes on the troubled Austin apartment complex.

Said Cox: "The hardest thing to accept about the problems, although they have not been all of my own doing, is that the investments have not been a success."

Chula Vista, CA
(San Diego Co.)
Star News
(Cir. 2 x W. 24,418)

APR 26 1986

Allen's P. C. B. Est. 1888

Cox met with bank president to change decision on loan

By Tim McClain
Staff Writer

Home Federal Savings and Loan reconsidered and later approved in 1985 a \$2.2 million loan for an Austin, Texas, apartment project in which Mayor Greg Cox held title to the land, following a meeting between Cox, Bonita resident Patrick Judd and Kim Fletcher, the bank chairman.

The loan raises questions whether Cox was treated any differently than the legal "man on the street" because of his status as an elected official.

One person who believes there was no preferential treatment is Judd, an investment partner of Cox's who was turned down for the loan when the mayor's \$35,000 annual income and assets were not included on the application.

"Had Greg Cox applied originally with me than we would have been treated the same way that we were treated when he combined his net worth with mine," Judd said Friday. "The issue had nothing to do with who he was."

The August meeting with Fletcher was arranged at the request of Judd, a real estate investor who had two years earlier put together a partnership that bought the apartment complex from a group headed by the Chula Vista mayor.

In that 1983 deal Judd and his investors acquired the 123-unit complex called the Gazebo, while Cox, who in 1979 organized a group that purchased the apartments, retained title to the land valued at \$117,000. The majority of Cox's investors were cashed out in the deal.

In order for the 1985 loan to be approved, which was a refinancing of the project, Cox was required to co-sign by Home Federal, putting up his interest in the land and applying his personal net worth.

Home Federal is the owner of the Bonita Long Canyon housing development. Four months after the loan was made Cox voted to increase the number of homes that could be built at the project.

Friday's revelation of Cox and Judd's meeting

See Cox: page A4

Cox: \$2.2 million loan issue

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Continued from page A1

with Fletcher comes less than two weeks after *The Los Angeles Times* reported Cox's failure to disclose the loan on his 1985 financial forms.

According to the Fair Political Practices Commission, Cox was required under the state Political Reform Act to disclose the loan because it was for more than \$10,000 and involved a bank with branches in Chula Vista.

Because of changes in the law, it appears Cox would not have had to disclose the loan on his 1986 forms because he was a candidate for office, winning reelection as the first unopposed candidate in the city's history. However, Cox decided to amend his 1985 and 1986 forms and report the loan after learning that *The Times* was looking into his finances.

If Cox is found to have violated the disclosure law, he could be fined a maximum of \$2,000, according to FPPC Spokeswoman Jeanette Turvill.

Questions on whether Cox should have abstained from voting on the Long Canyon project appeared to have been answered this week by a section of the government code discovered by City Attorney Tom Harron and verified by the FPPC. It stated that commercial loans were not treated as sources of income and not subject to conflict of interest laws that require an elected official to refrain from voting.

Cox has been out of town since Wednesday evening and is not expected back in Chula Vista until Monday. His secretary would not give out a phone number where he could be reached.

Before leaving, Cox completed a letter to the FPPC explaining his situation and asking for a ruling on both the conflict and reporting issues. FPPC investigators had declined to give an opinion over the telephone because of questions on how to treat his status as a third mortgage holder on the Austin apartments.

While the letter was given to the city attorney's office, it carried a statement from Cox asking that it not be released to the press until Monday (tomorrow).

Judd, who asked Cox to contact Fletcher, is irate with the publicity the loan is getting and said it is no different than a young man with a good job buying his first new car and the bank requiring someone to co-sign the loan.

"If you report the facts like the *L.A. Times*, it sounds diabolical," Judd said. "But if you deal with it in the same way the situation was at the time, it comes out much differently. We are both friends and I would have done the same thing for him."

During the meeting with Fletcher, Judd said, the three talked about the loan and South Bay issues such as the second harbor entrance and other issues. No mention was made of the Long Canyon project.

Judd said he asked Cox to set up the interview since the mayor knew Fletcher from their activity in United Way.

"I figured why not start at the top," Judd said.

At the end of the interview, Judd said, Fletcher referred them to a loan officer.

Fletcher was out of town Friday and could not be reached for comment. Monica Wiley, a Home Federal spokeswoman, confirmed the meeting had taken place.

Wiley said it was not an unusual way for a loan to be handled and that she herself has often directed applicants to a loan officer. The loan approved, she said, was much different than the one first submitted.

Wiley also said it would not have been unusual for Fletcher to have mentioned to a member of the loan committee his discussion with Cox and Judd.

Regardless of the political outcome of the recent disclosures about the loan, the financial position of Cox and his family has been severely depleted this year. In January he lost between \$150,000 and \$200,000 when a lawsuit went against an apartment complex he was part owner in. And the Austin apartment is scheduled for a foreclosure hearing May 5. If a buyer is not found before then, Cox will lose his entire investment.

In explaining his investment philosophy last week, Cox said he began in the 1970s by buying a small duplex in National City.

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MAY 7 1987

Allen's P. C. B Est. 1888

Cox loan issue raised 293

After reading the C.V. Star News, April 26, 1987 regarding the \$2.2 million loan issue involving our Mayor, Greg Cox, these points stand out:

No. 1. Home Federal Savings and Loan owns Bonita Long Canyon housing development and wished to increase housing density. The bank then reconsidered and approved a \$2.2 million loan on an Austin, Texas 123-unit apartment complex in which Cox was part owner. At reconsideration time Mayor Cox entered the loan picture disclosing, not pledging apparently, his \$35,000 annual salary and pledging his portion of a total \$117,000 land value on which the complex sits. Question: Was it this small additional collateral or the mayor's position that swayed the bank chairman?

No. 2. Four months after the loan approval, the mayor voted to increase the number of homes that could be built. In addition, Chula Vista is negotiating to annex Bonita into Chula Vista. Doesn't this sound like a "cooked" deal?

No. 3. The Chula Vista city attorney at the mayor's request, researched the law. The State Political Reform Act requires public officials according to the Fair Political Practices Commis-

sign to disclose loans more than \$10,000 and the Mayor had not done so. But the City Attorney discovered a section saying commercial loans were not treated as sources of income and not subject to conflict of interest laws that required elected officials to refrain from voting. However, Mayor Cox amended his 1985 and '86 forms and disclosed the loan after learning the Los Angeles Times was looking into his finances.

No. 4. In light of the above information, in reality this does not appear to be a straight, untainted commercial loan unless one wears blinders looking neither right or left. Isn't it better to keep public officials honest before they reach higher office?

H.S. McCAULEY
Chula Vista

APR 13 1987

Allen's P. C. B. Est. 1888

San Diego, Monday, April 13, 1987

THE TRIBUNE

Mayor Cox to ask opinion on \$2 million loan

Dee Anne Traitel
Tribune Staff Writer

Chula Vista Mayor Greg Cox says he will seek a formal opinion from the state Fair Political Practices Commission out his votes in support of two Chula Vista housing projects financed by Home Federal Savings and Loan Association after receiving a \$2.2 million loan from the lending institution. The loan, secured in August 1985, was not reported on disclosure statements filed by Cox in 1985 or 1986. "I never tried to hide anything," Cox said today. "When I do economic disclosure statements what I do is look at previous years and nothing had changed from one year to the next as far as I was concerned." Cox said he and 10 partners in a joint venture sought a \$2.2 million loan to bail them out of imminent default on a 123-unit Austin, Texas, apartment complex they had owned. Cox said they bought the complex in 1979 and sold it in 1983 because his name remained on the ground lease, the bank asked him to cosign on the loan. "It was a fluke that I had to sign on it at all," Cox said. "I

have absolutely no dealings with the day-to-day operations."

Cox said when the property sold in 1983, he and his wife ended up with a \$117,000 third trust deed on the property secured by a ground lease.

Cox said he became aware of an inquiry into his Texas holdings by a Los Angeles Times reporter and on March 31 contacted the FPPC to find out if he had done anything wrong.

"They weren't able to give me a definitive answer," he said, adding that he is preparing financial documents to submit to the FPPC for a formal opinion.

On April 2, he said, "out of an excess of caution" he amended his 1985 and 1986 financial forms to reflect the loans.

Jeanette Turvill, a spokeswoman for the FPPC, said today that the commission will look into the matter once it receives a written request from Cox.

She said the commission will be asking two main questions: first, was the loan required to be disclosed, and, second, was there a conflict of interest.

The Political Reform Act, she said, requires officials to report loans in excess of \$10,000 from banks operating in the local

jurisdiction where they might influence local decisions.

Penalties for non-disclosure can run up to \$2,000 per violation.

"The question is, did it really constitute a loan to him and the bank really doing anything that benefits him?" said Chula Vista City Attorney Tom Harron. "If they are forcing him to take a second or third trust deed to secure his investment, the bank may not be doing him any favors."

"I didn't even look at the lending institutions involved because I didn't have any financial interest in the apartment complex," Cox said, referring to his votes on the Bonita Long Canyon and El Rancho Del Rey projects, also financed by Home Federal Savings and Loan Association.

Both projects have raised concerns among community members because of density and the amount of an increasing amount of traffic expected to be generated by both.

"Whenever I've had a decision to make as a member of Chula Vista City Council, my decision has always been made in the best interest of the city," Cox said.

Staff writer Bob Corbett contributed to this report.

APR 13 1987

Allen's, Conn. B Est. 1888

Monday, April 13, 1987

The San Diego Union B-3

Chula Vista mayor says failure to list loan was oversight

By Christopher Reynolds
Staff Writer

Chula Vista Mayor Greg Cox received a \$2.2 million real estate loan from Home Federal Savings & Loan Association in August 1985 and did not disclose it in economic interest forms for 20 months, though during that time he cast votes supporting a pair of major housing development projects financed by the lender.

"I didn't even reflect on the lending institution that made the loan, so consequently I didn't pick it up," Cox said yesterday. "I'm sure I'll spend a lot more time thinking and reflecting on these things in the future."

Cox said he and 10 other partners in a joint venture needed the loan to save their investments in a troubled 123-unit Austin, Texas, apartment complex. The group bought the complex in 1979 and sold it in 1983, Cox said, but because he retained the land his name was included in the loan application.

Cox did not include the loan on his financial disclosure forms in 1985 or 1986. But on April 2, after questions about it were raised by a *Los Angeles Times* reporter, Cox amended his forms to include the transaction.

He and Chula Vista City Attorney Thomas Harron have asked the state Fair Political Practices Commission for an opinion on whether the transaction should be reported in disclosure forms. Fair Political Practices Commission officials could not be reached for comment yesterday.

"I certainly had no willful intent to hide the information," said Cox. "It's not clear whether there was a need to disclose it, but I certainly wasn't trying to hide anything."

"He certainly didn't intend to do anything improper," said Harron. "I don't think it's improper, and I also think it didn't even come into his mind" that his loan from Home Federal might compromise his City Council votes on projects backed by the savings and loan association.

"We do a lot of apartment lending and we do some out-of-state lending, so it's all within the scope" of normal business practices, said Home Federal spokeswoman Monica Wiley of the \$2.2 million loan.

In the last three years, Home Federal real estate subsidiary Home Capital Development Corp. has been involved with builder Corky McMil-

lin in El Rancho Del Rey and Bonita Long Canyon — two of Chula Vista's largest development projects, with the former planned to include more than 4,000 units and a 100-acre business park, the latter to include more than 850 units.

Home Capital purchased the El Rancho Del Rey property in January 1986 for about \$27 million, Wiley said, and bought the Bonita Long Canyon property in summer 1984 for \$9.7 million.

The City Council, including Cox, has voted several times on various details of the two projects.

In November 1985, the council approved plans calling for 4,028 units in the El Rancho Del Rey project. In August 1986, the council unanimously approved a final subdivision plan calling for 862 units in Bonita Long Canyon.

Frank Scott, a former City Council member and chairman of the slow-growth community group Crossroads, has wrangled frequently with Cox over development issues, but yesterday he defended the mayor's integrity.

"I think it was an honest mistake," said Scott. "I've sat with Greg for 12 years, and I know him to be pro-development. . . . But I've never had a question about his honesty or integrity."

Cox, 38, a long-time City Council member, has served as mayor of Chula Vista since 1981. He has invested in real estate for about 15 years, and in 1982, stepped down as dean of activities for Bonita Vista High School and made the mayoralty a full-time job. The Chula Vista mayor's post carries a salary of about \$29,500 a year.

The Austin apartment complex, Cox said, is a key part of his holdings, and its uncertain status poses a substantial threat to his family's economic state.

The property was scheduled for a foreclosure auction on April 7, Cox said, which could have cost him \$117,000. The sale was postponed, he said, when a potential buyer appeared.

"The interest that I have in the note (on the Austin property) is certainly the major portion of my family's assets," Cox said. "It would be more than 50 percent of my net worth."

San Diego, CA
(San Diego Co.)
San Diego Union
(Cir. D. 217,089)
(Cir. S. 341,840)

APR 10 1987

Allen's P. C. B. Est. 1888

293 MORE than a tragedy

Greg Cox, the youthful, effective mayor of Chula Vista, has projected the image of an able, dedicated, and attractive public servant during his six-year term in office, and as a councilman before that. He has been widely seen as one of the most promising young Republican comers in the state; surely bound for higher office.

That Mayor Cox is now besmirched with the possibility of misfeasance is all the more surprising, disappointing, and distressing. The bleak facts are not in dispute. Mr. Cox must answer for two basic wrong doings: He failed to report a \$2.2 million loan made in August 1985 by Home Federal Savings & Loan Association, as required by the state's Political Reform Act, and he voted favorably on two multimillion-dollar developments being financed by his creditor.

The mayor failed to include the enormous loan on his financial

disclosure forms in 1985 and 1986. Meanwhile, he cast a number of favorable votes on El Rancho Del Rey and Bonita Long Canyon — two of Chula Vista's largest development projects, which include almost 5,000 housing units and a 100-acre business park.

According to Mr. Cox, the loan was made to avoid default on a 123-unit apartment complex in which he was involved with other investors in Austin, Texas. Even so, he faces a new foreclosure auction on May 7.

Mayor Cox has properly asked the state Fair Political Practices Commission to determine to what extent he is in violation of the law. The FPPC has advised that its decision will be handed down within 21 working days after receiving all the facts. If found guilty of violating the disclosure and conflict-of-interest provisions of the Political Reform Act, Mr. Cox could face horrendous fines and even imprison-

ment.

So honorable is the mayor's reputation that his friends in Chula Vista and beyond are incredulous that he should knowingly violate the law. And yet, disbelief must be suspended when an elected official completely overlooks his responsibility under the law concerning a personal loan of \$2.2 million.

The saddened public is brought again to consider how Mayor Cox or any other public official on a salary of about \$29,500 can become involved in a losing \$2.2 million deal in Texas. And why? The answer, of course, is that such officials are courted for their influence by high rollers with seductive inside deals that supposedly can't go wrong.

The disaster that has befallen Greg Cox is more than a tragedy for him and his family; it represents a potential loss of some magnitude for the people of San Diego County.

APR 16 1987

Allen's P. C. B. Est. 1987

Financial disclosure is not 'excess'

CHULA VISTA Mayor Greg Cox erred twice by neglecting to report a \$2.2 million loan from Home Federal Savings and Loan on his 1985 and 1986 financial disclosure forms. He failed to disclose the loan and he failed to abstain on subsequent votes involving Home Federal developments.

Cox says he didn't report the loan because it did nothing to change the status of his investment in a struggling Austin, Texas, apartment complex. But he should have recognized that Home Federal's development activities in Chula Vista made disclosure necessary.

Although Home Federal made the loan in August 1985, Cox did not report it until earlier this month after learning that reporters for the Los Angeles Times were examining his Texas investments. Cox then amended his 1985 and 1986 disclosure forms "out of an excess of caution," he said.

There is no such thing as "excess" disclosure. And Cox, who has been an elected official for more than 10 years, should know that. Persons who choose to run for public office have an obligation — moral and legal — to inform constituents of their financial interests and any potential conflicts of interest they might have.

That's why the state's Fair Political Practices Act requires public officials to disclose most loans in excess of \$10,000, if the lender operates in the official's jurisdiction. And it is why Cox, to his credit, does all his real-estate investing outside Chula Vista.

But when his Texas real-estate deal went sour, Cox turned to a local lender for help. There's nothing wrong with that, so long as the mayor receives no preferred treatment and discloses the relationship. And there is no evidence at this time that Cox received special consideration from Home Federal or that his votes on two of its projects were influenced by the loan. In fact, both projects had enough votes to have won City Council approval even if Cox had abstained. He should have.

The state Fair Political Practices Commission will have to determine whether Cox's failure to report the loan and his subsequent votes on the developments financed by Home Federal violated the state's Fair Political Practices Act.

One thing is certain. Regardless of what the FPPE decides, Cox's failure to report the loan was a lapse in judgment by an experienced politician who should have known better.



California Fair Political Practices Commission

April 29, 1987

Gregory Cox
Mayor, Chula Vista
276 Fourth Avenue
Chula Vista, CA 92010

Re: 87-128

Dear Mr. Cox:

Your letter requesting advice under the Political Reform Act was received on April 27, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).) You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh